

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ALEX ANG and LYNN STREIT,	)	
individually and on behalf of	)	
all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No.
	)	13 Civ. 1196 (WHO)
BIMBO BAKERIES USA, INC.,	)	
	)	
Defendant.	)	
	)	

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VOLUME I

DEPOSITION of ALEX ANG

February 13, 2015

ANGELICA R. GUTIERREZ, CSR No. 13292  
388328



(310) 207-8000 Los Angeles  
(916) 922-5777 Sacramento  
(818) 702-0202 Woodland Hills  
(516) 277-9494 Garden City

(415) 433-5777 San Francisco  
(408) 865-0550 San Jose  
(212) 808-8500 New York City  
(914) 510-9110 White Plains

(949) 955-0400 Irvine  
(760) 322-2240 Palm Springs  
(347) 821-4611 Brooklyn  
(312) 379-5566 Chicago

(858) 455-5444 San Diego  
(951) 686-0806 Riverside  
(518) 490-1910 Albany  
(702) 366-0500 Las Vegas

00+1+800 222 1231 Paris

00+1+800 222 1231 Dubai

001+1+800 222 1231 Hong Kong

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12

13 VIDEOTAPED DEPOSITION OF

14 ALEX ANG

15 VOLUME I

16 SAN FRANCISCO, CALIFORNIA

17 FEBRUARY 13, 2015  
18  
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23 Reported by ANGELICA R. GUTIERREZ, CSR No. 13292  
24  
25

11:49 1 seal on a lightbulb, so with that seal I assume they  
2 tested the light bulb and rated it and it meets their  
3 standards.

4 Q. Do you know if the American Heart Association  
11:49 5 tested Thomas' Bagel Thins and rated them?

6 A. No. But I believe they did, since they had  
7 that label on the bag.

8 Q. Do you know if when Energy Star rates a  
9 product how it does that?

11:50 10 A. Not specifically. But I do know that they  
11 test for the rate of light and they look at the energy  
12 consumption of the bulb, so it meets a certain set of  
13 standard.

14 Q. Do you know who pays for that testing?

11:50 15 A. Yeah, I believe it's the government, but I'm  
16 not 100 percent.

17 Q. Do you know who pays for the American Heart  
18 Association to do testing on products?

19 A. No.

11:50 20 Q. Did you ever do any research into what it  
21 takes for the American Heart to put a check mark on a  
22 product?

23 A. No.

24 Q. Do you know what criteria go into the decision  
11:50 25 for the American Heart Association to put a Heart-Check

11:52 1 MR. GOODMAN: Q. What's your understanding of  
2 how the Heart-Check mark got onto the Thomas' Bagel  
3 Thins?

4 A. Can you repeat that?

11:52 5 Q. Sure. What is your understanding of how the  
6 Heart-Check mark got onto Thomas' Bagel Thins?

7 A. My understanding now or when I bought them?

8 Q. Let's start with when you bought them.

9 A. So I assumed the Heart Association looked at  
11:52 10 the bagel, looked at the nutrition facts, and deemed  
11 them worthy of that label.

12 Q. And now what is your understanding?

13 A. Now it's my understanding that the label was  
14 paid for and they put on the bag.

11:52 15 Q. Do you have that understanding from any source  
16 other than Mr. Gore?

17 A. Did I do research on it?

18 Q. No. Did you have that understanding from any  
19 source other than Mr. Gore?

11:53 20 A. No.

21 Q. Have you done any research into whether a  
22 company can pay to have a Heart-Check mark put on its  
23 products?

24 A. No.

11:53 25 Q. Is it your understanding that a Heart-Check

11:53 1 mark can be put on a product no matter what the product  
2 paid for?

3 A. You know, I'm not really an expert.

4 Q. I'm not asking for you to be an expert, I'm  
11:53 5 asking you for your understanding.

6 A. No. 'Cause I don't think they would put their  
7 mark on like motor oil.

8 Q. Why not?

9 A. Because that has not anything to do with your  
11:53 10 heart.

11 Q. Okay. If they put a Heart-Check mark on a box  
12 of softies or donuts, do you believe that the American  
13 Heart Association put their mark on that box of softies  
14 that Entenmann's paid for it?

11:53 15 A. If they paid for it, yeah, it's my  
16 understanding.

17 Q. Do you know whether there are any  
18 requirements, other than payment, that a company has to  
19 go through in order to get a Heart-Check mark on its  
11:54 20 products?

21 A. No, I do not.

22 Q. Have you ever looked at the American Heart  
23 Association website to determine how the Heart-Check  
24 mark system works?

11:54 25 A. No.

11:54 1 Q. Have you ever read any documents that tell you  
2 how the American Heart Association Heart-Check system  
3 works?

4 A. No.

11:54 5 Q. You're just accepting what Mr. Gore told you?

6 A. Yes.

7 Q. Has anybody else told you how the American  
8 Heart Association Heart-Check system works?

9 A. No.

11:54 10 Q. Do you know anybody who buys products because  
11 they have the American Heart-Check mark on them?

12 A. No.

13 Q. When you were buying Thomas' Bagel Thins did  
14 you buy the Bagel Thins because they had the

11:55 15 Heart-Check mark on them?

16 A. I bought them compared to other bagels because  
17 they had the Heart-Check mark on them.

18 Q. Did the Safeway brand have the Heart-Check  
19 mark on it?

11:55 20 A. No.

21 Q. So then why did you buy the Safeway brand?

22 A. They were probably on sale.

23 Q. Okay. So you did buy bagels without a  
24 Heart-Check mark on it?

11:55 25 A. They weren't a requirement for me to purchase

11:57 1 Q. How did you eat it?

2 A. What do you mean by that?

3 Q. Make a sandwich out of it, did you put jam on  
4 it; how di you consume it?

11:57 5 A. Oh, you know, we ate it the way we eat  
6 crackers, eat them plain or if we had some kind of  
7 spread, use spread on it.

8 Q. Do you know whether you brought Bimbo's Toast  
9 on more than one occasion, you personally, purchasing  
11:58 10 it?

11 A. Yes.

12 Q. How many times, roughly?

13 A. I'd say at least ten.

14 Q. More than twenty?

11:58 15 A. That would be hard to say.

16 Q. And do you know whether you bought Bimbo's  
17 Toast last in 2012?

18 A. You know, I don't recall if I bought it that  
19 year.

11:58 20 Q. How about 2011?

21 A. Possibly. I don't remember.

22 Q. How about 2010?

23 A. It might have been. I don't remember the last  
24 time I bought it.

11:58 25 Q. I'm asking you when you recall the last time



11:58 1 you bought it. Do you know for sure you bought it in  
2 2010?

3 A. You know, I can't really recall.

4 Q. Do you know whether you bought it in 2009?

11:59 5 A. I don't know.

6 Q. Do you know whether you bought any in 2008?

7 A. You know, I'm not sure. But between 2008 and  
8 2010 was the last time.

9 Q. Do you recall buying it between 2008 and 2010?

11:59 10 A. Yes.

11 Q. When?

12 A. I don't remember.

13 Q. Where did you buy it?

14 A. I don't remember, either.

11:59 15 Q. Did you buy it at Safeway?

16 A. Might have been.

17 Q. Anything is possible, Mr. Ang?

18 A. It's not one of those everyday items. It's  
19 hard to recall that far back.

11:59 20 Q. Do your roommates eat toasted bread?

21 A. If it was in the house they would eat it.

22 Q. Yeah. How did they eat it?

23 A. Same way, they would snack on it like  
24 crackers.

12:00 25 Q. Do you ever buy any other types of toasted

12:00 1 bread?

2 A. No.

3 Q. Ever buy any melba toast?

4 A. I have bought that.

12:00 5 Q. When was the last time you bought melba toast?

6 A. It was probably in the last year.

7 Q. How do you eat melba toast? The same way,

8 like a cracker?

9 A. Yeah.

12:00 10 Q. Do you also buy crackers?

11 A. Not typically.

12 Q. Are you more likely to buy toasted bread than

13 crackers to use as a cracker?

14 A. I probably most likely buy crackers.

12:01 15 Q. What kind of crackers do you typically buy?

16 A. Just regular saltine crackers.

17 Q. Any other brand of crackers that you buy?

18 A. No, not that I can recall.

19 Q. When was the last time you bought saltine

12:01 20 crackers?

21 A. Must have been in the last year.

22 Q. Have you bought saltine crackers pretty

23 regularly since you were in college?

24 A. Not regularly. It's something that's usually

12:01 25 in the pantry. We don't go through them that fast.

12:20 1 product and not consumed it, not eaten it?

2 A. Possibly, if I bought it and brought it to my  
3 parents' house.

4 Q. Have you ever had any -- strike that.

12:20 5 The purpose of your buying Bimbo Bakery  
6 products was to eat them, correct?

7 A. Yes.

8 Q. Somebody, whether it's your parents, your  
9 roommates or you, the purpose was for them to be eaten,  
12:20 10 correct?

11 A. Yes.

12 Q. You've never distributed any Bimbo Bakeries  
13 products, have you?

14 A. As a gift or something? No.

12:20 15 Q. Have you ever sold any?

16 A. No.

17 Q. Have you ever tried to sell any?

18 A. No.

19 Q. Have you ever had any Bimbo Bakeries products  
12:20 20 seized from you by a federal or state agency?

21 A. No.

22 Q. Would it matter to you if you couldn't resell  
23 the food products that you buy?

24 A. No, I don't sell the food that we buy.

12:21 25 Q. You buy food to eat it?

12:21 1 A. Yes.

2 Q. Have you ever read the FDA's October 2009  
3 guidance for industry letter?

4 A. No.

12:21 5 Q. And have you ever read the March 2010 open  
6 letter to industry from the FDA?

7 A. No.

8 Q. Have you ever read any FDA publications?

9 A. Not that I recall.

12:21 10 Q. Are you familiar with food labeling  
11 requirements under federal law?

12 A. No.

13 Q. Are you familiar with food labeling  
14 requirements under California law?

12:21 15 A. No.

16 Q. Have you familiar with any food labeling  
17 requirements under any state laws?

18 A. No.

19 Q. Do you know what a nutrient is?

12:22 20 A. Yes.

21 Q. What is a nutrient?

22 A. A substance that would provide nutrients to  
23 your body. So calcium, for example.

24 Q. Can you think of any other nutrients besides  
12:22 25 calcium?

12:43 1 A. I don't know how that would be classified,  
2 either.

3 Q. Have you ever bought any products that were  
4 labeled an excellent source of whole grains because  
12:43 5 they were labeled that?

6 A. Yeah. If a product said that and a comparable  
7 product didn't I would lean towards them.

8 Q. Do you recall doing that?

9 A. Yeah, I believe so.

12:44 10 Q. Which products would you buy that said an  
11 excellent source of whole grains on them?

12 A. I believe it was Sara Lee bread.

13 Q. Any others?

14 A. Not that I can recall.

12:44 15 Q. What product were you comparing the Sara Lee  
16 bread to that made you choose the Sara Lee bread?

17 A. I don't remember specifically, but it was  
18 either the house brand bread or another brand.

19 Q. So would you always pick the Sara Lee bread  
12:44 20 that claimed to be an excellent source of whole grain  
21 over the house bread if it didn't make that claim?

22 A. I wouldn't say always, but it would sway me in  
23 that direction.

24 Q. What do you mean, it would sway you in that  
12:44 25 direction?

01:19 1 Q. In this document numbered 2, on page number 1,  
2 it says: Plaintiffs have in their possession, custody  
3 or control packaging related to protects identified in  
4 the second amended complaint. Do you have any such  
01:20 5 packaging in your possession, custody or control?

6 A. No.

7 Q. Your lawyer handed me, this morning, an  
8 envelope stuffed -- I can't think of a better word,  
9 show that to the camera, with -- it looks like labels  
01:20 10 of various products packaged as -- it's addressed to  
11 Pierce Gore at the address that we're at today, it says  
12 it's from Alexander Ang on 20th Avenue, San Francisco,  
13 California; do you recall sending this page to  
14 Mr. Gore?

01:20 15 A. Yes.

16 Q. When did you do that?

17 A. Must have been around March 2013. I don't  
18 know the exact date.

19 Q. Why do you say it must have been March 2013?

01:21 20 A. Because I sent it over when I first started...

21 Q. Okay. There's no postmark on this. Did you  
22 put it in the mail?

23 A. Yes.

24 Q. I assume you don't know why there's no  
01:21 25 postmark on it.

02:34 1 A. The thing is I didn't know it contained it  
2 when I purchased it.

3 Q. I'm asking you if you would have cared.

4 A. If I knew?

02:34 5 Q. Yes.

6 A. If I knew I probably would care.

7 Q. There was a way for you to know, right, you  
8 could have read the ingredients.

9 A. But I didn't.

02:34 10 Q. Right. So if you cared you could have read  
11 the ingredients, right?

12 A. Yes, I could have.

13 Q. But you didn't?

14 A. Right.

02:35 15 Q. You see on the bottom it says in bold:  
16 Contains wheat, soy and milk. Do you see that?

17 A. Yes.

18 Q. Did you care that it contained wheat, soy and  
19 milk at the time you purchased this product?

02:35 20 A. Not at the time.

21 Q. Do you care now?

22 A. Yeah, I do care now.

23 Q. Why?

24 A. You know, I would try to stay away from  
02:35 25 something with high fructose corn syrup in it.

02:36 1 lecithin in it would you have bought it?

2 A. I don't know what it is.

3 Q. Do you know what soy flour is?

4 A. I'm assuming it's flour made out of soy.

02:36 5 Q. If you knew that this product had soy flour in  
6 it would you have bought it?

7 A. Yeah, that wouldn't have stopped me from  
8 buying it.

9 Q. Next page. Picture of the other side of the  
02:36 10 bread bag where it says: Facts based on two slices of  
11 bread.

12 Do you recall seeing this information on the  
13 Sara Lee Whole Wheat Bread label?

14 A. No.

02:37 15 Q. Are you looking at the same thing I am?

16 A. No, I'm not.

17 Q. Should be on the page that says: Facts based  
18 on two slices of bread.

19 Green with circles.

02:37 20 A. Yeah.

21 Q. What are -- those circles have the calories;  
22 did you look at that?

23 A. Yes.

24 Q. Did you look at this circle with the calories?

02:37 25 A. Yes.



02:39 1 Q. Based on two slices, Mr. Ang, if you can see,  
2 if you read the package.

3 A. I'd say if it was over 20.

4 Q. 20 grams?

02:39 5 A. Yeah.

6 Q. Okay. Are you familiar with any sandwich  
7 bread that has over 20 grams of sugar per two slices?

8 A. No.

9 Q. How about the fiber content, is that enough  
02:39 10 fiber for you to buy this product?

11 A. That didn't determine whether I bought it or  
12 not.

13 Q. What about sodium, did that determine whether  
14 you bought it or not?

02:39 15 A. No.

16 Q. What about the whole grain, did that determine  
17 whether you bought it or not?

18 A. No.

19 Q. Do you know whether 28 grams of whole grain is  
02:40 20 a lot?

21 A. I don't know if that's a lot.

22 Q. Is there a particular number of whole grains  
23 that you're looking for in bread?

24 A. Not in particular.

02:40 25 Q. Is there a minimum amount of whole grain you

02:41 1 Q. Did you read the label for these Thomas' Mini  
2 Bagels other than just seeing if it was a Thomas' Mini  
3 Bagel?

4 A. You know, I can't recall if I did or not.

02:41 5 Q. Okay. Looking at the pictures does that  
6 refresh any recollection you had of looking at any part  
7 of that label?

8 A. No.

9 Q. Okay. Next set of pictures is for Sara Lee  
02:41 10 Classic 100 percent Whole Wheat. Do you recognize this  
11 label?

12 A. Yes.

13 Q. How do you recognize this label?

14 A. I have purchased this product before.

02:41 15 Q. And why did you purchase this product?

16 A. 'Cause I like the taste and it was wheat bread  
17 as opposed to white bread.

18 Q. And the price?

19 A. And the price.

02:42 20 Q. Were there any particular parts of this label  
21 that you looked at before you bought it?

22 A. I looked at the front label.

23 Q. One on the first page?

24 A. Yes.

02:42 25 Q. Okay. Any other parts?

02:42 1 A. Not that I recall.

2 Q. What on the front label in particular did you  
3 look at?

4 A. I looked at the entire front label.

02:42 5 Q. Nothing in particular?

6 A. No.

7 Q. Did you check out the calories and  
8 carbohydrates in this product?

9 A. I don't remember if I did or not.

02:43 10 Q. On the third page there's a 100 percent whole  
11 grain sticker or mark; do you see that?

12 A. Yes.

13 Q. Do you recognize that sticker or mark?

14 A. No.

02:43 15 Q. Never seen that before, to your knowledge?

16 A. Doesn't look familiar.

17 Q. Do you know whether something that provides 28  
18 or more grams per serving of whole grain is a good  
19 source of whole grains if the Whole Grain Counsel  
02:43 20 recommends 48 grams or more of whole grains in a day?

21 A. No, I wouldn't know if you could classify that  
22 as good.

23 Q. Do you know whether, in your mind, as a  
24 consumer, something that provides more than 50 percent  
02:44 25 of a substance is a good source of that substance?

02:47 1 A. Yes.

2 Q. All right. I already asked you about the  
3 artificial color. If you had known it had artificial  
4 color you still would have bought that?

02:48 5 A. Yes.

6 Q. On the second to the last plage, Mr. Ang,  
7 there's a red sticker that says: Caution, do not  
8 microwave.

9 A. Okay.

02:48 10 Q. Do you recall seeing that on Bimbo Toasted  
11 Bread products?

12 A. Yeah, I have seen that before.

13 Q. Have you ever microwaved Bimbo Toasted Bread?

14 A. No.

02:48 15 Q. Why not?

16 A. It's like do you microwave your crackers?

17 Q. Do you know why you can't microwave Bimbo  
18 Toasted Bread?

19 A. I don't know.

02:49 20 Can you tell me, now that you brought that up?

21 Q. I'll take you out for a beer some time. I  
22 don't answer questions in my own depositions.

23 Next set of pictures is Thomas' Bagel Thins,  
24 Plain. Do you recognize this package?

02:49 25 A. Yes.

02:50 1 Do you recognize this product?

2 A. Yes.

3 Q. Okay. And how do you recognize this product?

4 A. I have brought this product.

02:51 5 Q. You understand this to be white bread?

6 A. Yep.

7 Q. I don't think you identified any Sara Lee

8 white bread products in your previous identification of

9 numerous products that you bought.

02:51 10 A. Yeah, it's not something that I purchase

11 regularly, but I have purchased it.

12 Q. Okay. Do you know when you purchased this

13 product?

14 A. I don't recall.

02:51 15 Q. Do you recall how much you paid for it?

16 A. No.

17 Q. Do you recall what store you bought this

18 product at?

19 A. I don't know.

02:51 20 Q. Do you recall in what year you might have

21 bought this product?

22 A. I don't remember.

23 Q. Why did you buy this product?

24 A. You know, I've had this product before, so I

02:51 25 knew what it tasted like and -- I can't say for sure,

02:51 1 but it was probably a good deal at the time of  
2 purchase.

3 Q. Good deal, good price?

4 A. Compared to something else.

02:52 5 Q. You say you've had it before, you mean when  
6 you were a kid?

7 A. Yes.

8 Q. Do you recall the first time you ever had Sara  
9 Lee Soft and Smooth Bread?

02:52 10 A. No.

11 Q. When you bought this product do you recall  
12 looking at any parts of the label other than the fact  
13 that it was Sara Lee Soft and Smooth and you'd had it  
14 before?

02:52 15 A. I looked at the front of the label. I can't  
16 say that I really checked out the back.

17 Q. But do you know if you looked at any  
18 particular parts of the front label?

19 A. Not in particular, I just looked at the whole  
02:52 20 front label.

21 Q. You mean you just saw it?

22 A. No, I read it.

23 Q. What were you reading, in particular?

24 A. I mean there's not a lot here, so everything,  
02:52 25 you know, from Sara Lee moving down to excellent source

02:53 1 A. No.

2 Q. Do you remember comparing this to Safeway's  
3 bread and determining whether it was a better source of  
4 whole grain?

02:53 5 A. No. I just took it for face value on the  
6 front of the package.

7 Q. Do you know what made with 35 percent whole  
8 grain means?

9 A. No. I would assume it just means 35 percent  
02:54 10 of the flour they use is whole grain flour.

11 Q. 35 percent of the wheat flour they use is  
12 whole grain flour?

13 A. The flour in general is whole grain.

14 Q. Any flour in general? What other flour goes  
02:54 15 into wheat bread?

16 A. In the 100 percent whole wheat bread there's  
17 actually soy flour in it.

18 Q. That's not a grain though, is it?

19 A. No.

02:54 20 Q. Do you know what other grain flour goes into  
21 wheat bread?

22 A. No.

23 Q. You can see in this set of pictures on the  
24 second page, first ingredient is enriched bleached  
02:54 25 wheat flour. Do you know if that is whole wheat flour?

02:55 1 A. I don't know.

2 Q. Do you know if that's a type of flour?

3 A. I would assume so.

4 Q. On the next page it says whole grain. If it's

02:55 5 whole wheat flour, whole barley flour, do you know what

6 whole wheat flour is?

7 A. I'm assuming it's flour made out of whole

8 wheat.

9 Q. Do you know what barley flour is?

02:55 10 A. Flour made from barley.

11 Q. Do you know if barley is a grain?

12 A. I believe it is.

13 Q. If this didn't have any whole grain would you

14 still have bought it?

02:55 15 A. For this, yes, I was looking for white bread.

16 Q. Do you recognize the last set of pictures as

17 Entenmann's Soft Wheat Bread?

18 A. I've seen it before.

19 Q. You've never bought it, though?

02:56 20 A. Not that I recall.

21 Q. You seen it before, but there's box sitting in

22 front of you, right?

23 A. I've seen in the store, though. I guess

24 people bring it into work.

02:56 25 Q. Right. Have you ever eaten an Entenmann's



02:59 1 A. I reviewed the front part of the bag.

2 Q. And you're gesturing toward the -- can you  
3 just hold it up and point to it, please? Thank you.

4 So basically this corresponds to the second  
03:00 5 and third pages of Exhibit 20; is that fair?

6 A. Yes.

7 Q. And, again, other than the fact that it says  
8 Sara Lee 100 Percent Whole Wheat Bread, was there  
9 anything that you relied on in making a purchase of  
03:00 10 this product?

11 A. Not in terms of making my purchasing decision.

12 Q. Before we move on, did any of the Sara Lee  
13 100 Percent Whole Wheat Bread that you bought have this  
14 labeling on it?

03:01 15 A. Yes.

16 Q. You looked at the bag and made sure that it's  
17 the same bag that you purchased?

18 A. Yes.

19 MR. GOODMAN: I'm trying to keep this stuff in  
03:02 20 order here.

21 Mark that one next, please.

22 COURT REPORTER: This is 21.

23 (Exhibit 21 was marked for  
24 identification.)

03:02 25 MR. GOODMAN: Q. We've marked as Exhibit 21 a

03:05 1 Q. Okay. One difference I can tell you between  
2 the weapon the two labels is in the ingredients; one  
3 has soy flour and one doesn't.

4 A. Okay.

03:05 5 Q. Do you remember whether the bread you bought  
6 had an ingredient of soy flour versus not having an  
7 ingredient of soy flour?

8 A. No. Like I said, when I was purchasing it I  
9 wasn't going through the ingredient list.

03:05 10 Q. So you're not sure which label the bread that  
11 you bought had?

12 A. Yes.

13 MR. GOODMAN: I'll take that back.

14 Is that 23?

03:06 15 COURT REPORTER: Yes.

16 (Exhibit 23 was marked for  
17 identification.)

18 MR. GOODMAN: Q. And with regard to  
19 Exhibit 23, another label, this one for 16 Ounce Sara  
03:06 20 Lee Classic 100 Percent Whole Wheat. Did you ever buy  
21 any product with this particular label on it?

22 A. Again, this looks pretty similar to Exhibit  
23 21, so I couldn't tell you for certain if it was this  
24 label or that label.

03:06 25 Q. And by this label you mean what we've marked

03:14 1 Q. Okay. So Exhibit 21 is a Sara Lee 100 Percent  
2 Whole Wheat Bread, correct?

3 A. Correct.

4 Q. This one is Sara Lee Soft and Smooth 100  
03:14 5 Percent Whole Wheat, correct?

6 A. Correct.

7 Q. Okay. Those are two different labels, would  
8 you agree with me on that one?

9 A. I think they are pretty similar.

03:15 10 Q. Okay. I'm not asking if they are similar, I'm  
11 asking if they are different labels.

12 A. Yeah, they are different.

13 Q. So my question to you is not -- again, I'm  
14 trying to make it clear, not whether you've seen these  
03:15 15 statements or these colors or these words before, but  
16 whether you've seen this exact label on the product  
17 that you brought.

18 A. Yeah, I've seen this label.

19 Q. So you've bought Sara Lee Soft and Smooth 100  
03:15 20 Percent Whole Wheat Bread, correct?

21 A. I'm not sure if I bought this package, but I  
22 have seen this label.

23 Q. Okay. When you've seen this label where did  
24 you see it?

03:15 25 A. On a loaf of bread.

03:15 1 Q. Where was the loaf of bread?

2 A. In a grocery store.

3 Q. Which store?

4 A. I don't recall exactly.

03:15 5 Q. Do you remember when you saw it?

6 A. No.

7 Q. Do you remember what year it was?

8 A. No.

9 Q. Do you remember if it was in the last two

03:15 10 years?

11 A. No, I don't remember.

12 Q. Do you have a specific recollection of looking

13 at the label that we've marked as Exhibit 25?

14 A. No.

03:16 15 Q. Do you have a specific recollection of looking

16 at any particular parts of the label that we've marked

17 as Exhibit 25?

18 A. No.

19 Q. Do you have any proof of purchase of any Sara

03:16 20 Lee Soft and Smooth Bread?

21 A. Not that I can think of.

22 Q. Do you have any proof of purchase of any Sara

23 Lee bread product at all?

24 A. No, 'cause I haven't bought them since 2013.

03:16 25 Q. And you haven't saved any proof of purchase

03:38 1 Q. Do you know whether Bimbo Bakeries has ever  
2 represented its goods as having a sponsorship that it  
3 did not have?

4 A. No, not that I know of.

03:39 5 Q. Do you know whether Bimbo Bakeries has ever  
6 represented any of its good to have approval that it  
7 did not have?

8 A. No, not that I know of.

9 Q. Do you know whether Bimbo Bakeries has ever  
03:39 10 represented that its goods had characteristics that it  
11 did not have?

12 A. Yeah, it was the 100 percent whole wheat claim  
13 on bread.

14 Q. And how do you know that the characteristic  
03:39 15 was not true?

16 A. I found that out through Mr. Gore.

17 Q. Have you ever undertaken to determine whether  
18 that characteristic was untrue, other than what  
19 Mr. Gore told you?

03:39 20 A. No, not independently.

21 Q. Do you know why that characteristic is untrue?

22 A. It's because it doesn't have 100 percent whole  
23 wheat flour, it also contains soy flour.

24 Q. So your understanding is that the bread does  
03:40 25 not have 100 percent whole wheat flour in it?

03:42 1 aware of that Bimbo sells that make that quantity claim  
2 that is not actually accurate?

3 A. No.

4 Q. So my next question was are you aware that  
03:42 5 Bimbo ever represented their goods were of a particular  
6 standard?

7 A. Yeah. The Heart Association logo, you know, I  
8 was under the assumption that the American Heart  
9 Association had, you know, reviewed the product and put  
03:42 10 a seal of approval on it.

11 Q. Do you know if the American Heart Association  
12 did not review a Bimbo product and yet the Bimbo  
13 product still has a seal of approval on it?

14 A. I was told that the seal was actually, you  
03:43 15 know, something that Bimbo did purchase.

16 Q. That's not my question, Mr. Ang. My question  
17 is do you know whether Bimbo's products have a seal of  
18 approval on them from the American Heart Association  
19 but do not meet the standards of the American Heart  
03:43 20 Association?

21 A. They have the American Heart Association seal,  
22 but I don't know what the standards are.

23 Q. That's not my question either.

24 Do you know whether they have a -- any of the  
03:43 25 Bimbo products that have an American Heart Association

03:43 1 check mark, mark on them, do not actually meet the  
2 American Heart Association standards to have such a  
3 mark on them?

4 A. I don't know that.

03:43 5 Q. Do you know whether Bimbo has ever represented  
6 any of its goods as having a quality that they do not  
7 have?

8 A. The toasted bread is more of a cracker, it's  
9 not really toasted bread.

03:44 10 Q. Did you think it was toasted bread when you  
11 bought it?

12 A. Yeah.

13 Q. You thought you were buying toast?

14 A. I didn't think I was buying toast, but I  
03:44 15 thought I was buying something that started off light  
16 colored, got toasted and got darker.

17 Q. You bought toasted bread because you ate it as  
18 a kid, right?

19 A. Yeah.

03:44 20 Q. So you knew when you bought toasted bread that  
21 you weren't buying toasted bread, you were buying a  
22 cracker, right?

23 MR. GORE: Objection. Argumentative.

24 MR. GOODMAN: I'm not arguing at all.

03:44 25 THE WITNESS: What was the question again?

03:44 1 MR. GOODMAN: Read it back, please.  
2 (Record read.)  
3 MR. GORE: Same objection.  
4 MR. GOODMAN: You don't have to object to the  
03:44 5 question when you read it back.  
6 THE WITNESS: I knew it wasn't toast, but I  
7 assumed it was, you know, it started out soft and got  
8 toasted and got hard, in the package.  
9 MR. GOODMAN: Q. Why did you make that  
03:45 10 assumption?  
11 A. Because it was called toasted bread.  
12 Q. Any other reasons?  
13 A. No.  
14 Q. Did you read the ingredients in the toasted  
03:45 15 bread to determine how it got to be toasted bread?  
16 A. Not as a kid.  
17 Q. Did you read it as an adult?  
18 A. No, because I was familiar with the product.  
19 Q. When you were purchasing the product did you  
03:45 20 believe that it was toasted bread or did you believe it  
21 was a cracker? Not when you were a kid but when you  
22 were an adult?  
23 A. To be honest, I never really thought about it.  
24 It was something that I already bought.  
03:45 25 Q. So you knew what the product was and you



03:58 1 something that is labeled with what it actually is.

2 Q. Have you ever knowingly purchased a misbranded  
3 food product?

4 MR. GOODMAN: Calls for speculation.

03:59 5 THE WITNESS: No, not knowingly.

6 MR. GORE: Q. How did the labels on the Bimbo  
7 Bakeries products that you purchased affect your  
8 purchase decision?

9 MR. GOODMAN: Lacks foundation.

03:59 10 THE WITNESS: You know, I figured they were  
11 healthier, so it was down towards the, you know,  
12 100 percent whole wheat, excellent source of whole  
13 grains on the packaging, rather than the store brand.  
14 It was a little bit more...

03:59 15 MR. GORE: Q. Were the portions of the label  
16 that you're complaining about in this lawsuit, were  
17 they a substantial factor in your purchase decisions?

18 MR. GOODMAN: Vague and ambiguous. Lacks  
19 foundation.

03:59 20 THE WITNESS: Yes, I would say so.

21 MR. GORE: Q. Can you briefly describe the  
22 time period, to the best of your recollection, when you  
23 stopped buying Bimbo Bakeries' products?

24 A. That would be March of 2013.

04:00 25 Q. And why did you stop buying Bimbo Bakeries'

04:06 1 label on this package did you read and rely on when you  
2 were purchasing this product?

3 MR. GOODMAN: Asked and answered, several  
4 times.

04:06 5 THE WITNESS: The brand. They were Bagel  
6 Thins. They were plain. The package count and also  
7 the Heart Association sticker.

8 MR. GORE: Q. And what is your specific  
9 complaint in this case concerning the label on this  
04:06 10 package?

11 MR. GOODMAN: Vague and ambiguous.

12 THE WITNESS: I was under the assumption that  
13 the Heart Association actually did testing  
14 in comparison -- testing and comparing it to other  
04:06 15 similar products on the market; more heart-healthier  
16 than others.

17 MR. GORE: Q. What understanding, if any, do  
18 you have about whether the logo that appears on this  
19 package is a paid endorsement?

04:07 20 A. I understand now that it's a paid endorsement,  
21 they did not go through any sort of certification.

22 Q. Did can you point to any portion of the label  
23 on this package that discloses that the Heart-Check  
24 logo is a paid endorsement?

04:07 25 A. No, I don't see that.

04:08 1 foundation.

2 THE WITNESS: Yes.

3 MR. GORE: Q. Did you purchase this product  
4 for your own consumption or because someone told you to  
04:08 5 go out and buy it?

6 MR. GOODMAN: Same objection.

7 THE WITNESS: Personal consumption.

8 MR. GORE: Q. On approximately how many  
9 occasions, between 2009 and 2013, did you purchase this  
04:08 10 product for personal consumption?

11 MR. GOODMAN: Asked and answered. Lacks  
12 foundation. Calls for speculation.

13 MR. GORE: Q. Go ahead.

14 A. I'd say close to thirty or forty.

04:08 15 Q. Okay. Could you please tell us the particular  
16 section on this label, on this package, that you read  
17 and relied on when you were purchasing this product?

18 MR. GOODMAN: Lacks foundation. Asked and  
19 answered.

04:09 20 THE WITNESS: Sara Lee brand and 100 percent  
21 whole wheat.

22 MR. GORE: Q. What is your specific complaint  
23 concerning the label on this package?

24 MR. GOODMAN: Calls for speculation. Lacks  
04:09 25 foundation. Vague and ambiguous.

04:16 1 MR. GOODMAN: You can answer.

2 THE WITNESS: Oh, those packages, those were  
3 for personal consumption.

4 I did send him other packages.

04:16 5 MR. GOODMAN: Q. You sent him other packages?

6 A. Yeah. I sent him other food labels that are  
7 not here right now.

8 Q. Where are those food labels?

9 A. I have no idea.

04:16 10 Q. Okay. Do you know what products those food  
11 labels were for?

12 A. I don't recall off the top of my head.

13 Q. I'm showing you this Sara Lee Soft and Smooth  
14 package that Mr. Gore showed you. How do you know this  
04:16 15 is the package that you sent to him?

16 A. I don't know. I can't verify. I didn't  
17 initial it or anything.

18 Q. How about the Sara Lee Classic, how do you  
19 know that this is the package that you sent to him?

04:17 20 A. Same thing. You know, I sent them all in a  
21 package. I didn't initial them so I can't really  
22 prove --

23 Q. Same thing for all of these, correct?

24 A. Correct.

04:17 25 Q. Do you recall buying this 100 percent whole

04:21 1 Q. What did Mr. Gore tell you about how these  
2 products are mislabeled?

3 MR. GORE: Objection. Attorney-client  
4 privilege. I will instruct you not to answer that  
04:21 5 question.

6 MR. GOODMAN: Q. Will you take that  
7 instruction, Mr. Ang?

8 A. Yes.

9 Q. Is there anything you can tell me about how  
04:21 10 these products are mislabeled without revealing  
11 Mr. Gore's advice to you?

12 A. No.

13 Q. Would you refuse to answer any questions about  
14 how you know that these products are mislabeled?

04:21 15 A. Yes.

16 Q. You said that, in response to one of  
17 Mr. Gore's questions, that you understand that the  
18 heart Mark is a paid endorsement; how do you have that  
19 enforcement?

04:21 20 A. Through my talking with Mr. Gore.

21 Q. And what is your understanding as to how the  
22 AAH mark is a paid endorsement?

23 MR. GORE: Objection. Vague. Calls for  
24 speculation.

04:22 25 You can answer.

04:22 1 MR. GOODMAN: Q. I'm asking for his  
2 understanding.

3 A. My understanding is it's something that's paid  
4 for, but not tested and certified by the American Heart  
04:22 5 Association.

6 Q. If the product were tested and certified,  
7 would that change your understanding?

8 MR. GORE: Objection. Incomplete  
9 hypothetical. Calls for an expert opinion.

04:22 10 You may answer.

11 THE WITNESS: Say that question again.

12 MR. GOODMAN: Q. Sure. If the product were  
13 tested and certified by the AHA would it change your  
14 understanding that it's misbranded?

04:22 15 MR. GORE: Same objection.

16 THE WITNESS: Yes.

17 MR. GOODMAN: Q. I don't have anything  
18 further.

19 EXAMINATION

04:22 20 MR. GORE: Q. Just a few more.

21 Mr. Ang, on the package of the Bimbo Toasted  
22 Bread, do you see a date that is identified on the  
23 package as a best-before date?

24 A. Yes.

04:23 25 Q. And what is that date?

DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA       )  
                                      ) ss.  
COUNTY OF CONTRA COSTA   )

I, Angelica R. Gutierrez, hereby certify:

I am a duly qualified Certified Shorthand  
Reporter in the State of California, holder of  
Certificate Number 13292 issued by the Court  
Reporters Board of California and which is in full force  
and effect. (Fed. R. Civ. P. 28(a)).

I am authorized to administer oaths or  
affirmations pursuant to California Code of Civil  
Procedure, Section 2093(b) and prior to being examined,  
the witness was first duly sworn by me. (Fed. R. Civ.  
P. 28(a), 30(f)(1)).

I am not a relative or employee or attorney or  
counsel of any of the parties, nor am I a relative or  
employee of such attorney or counsel, nor am I  
financially interested in this action. (Fed. R. Civ. P.  
28).

I am the deposition officer that  
stenographically recorded the testimony in the foregoing  
deposition and the foregoing transcript is a true record

/ / /

1 of the testimony given by the witness. (Fed. R. Civ. P.  
2 30(f)(1)).

3 Before completion of the deposition, review of  
4 the transcript [ X ] was [ ] was not requested. If  
5 requested, any changes made by the deponent (and  
6 provided to the reporter) during the period allowed, are  
7 appended hereto. (Fed. R. Civ. P. 30(e)).

8  
9 Dated: FEBRUARY 24, 2015

10  
11                     A.R. Gutierrez                      
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STORE MGR 408-257-3070  
THANK YOU FOR SHOPPING WITH US!!

## GROCERY

M/D BILL WCFD 4.79 F  
2 QT SFMY PSTA PEN RGT 1.58 F  
ResPrice 2.98  
Card Savings 1.40-  
2 QT SFMY PSTA FARFALE 1.58 F  
ResPrice 2.98  
Card Savings 1.40-  
LAURYS MARINADE 2.99 F  
ResPrice 3.69  
Card Savings .70-

## PRODUCE

MEDIUM CELERY 1.50 F  
ResPrice 1.99  
Card Savings .49-  
0.49 lb @ \$0.99 /lb  
WT CANNOTS 1.99 F  
ANANAS DJ PASTEUR 5.99 F  
ResPrice 8.99  
Card Savings 3.00-

## DELI

DC PARMESAN WEDGE 3.99 F  
CHEDDAR NY OV 5.71 F  
\*\*\*\* TAX 00 BAL 30.62  
VF DEBIT CARD 30.62

CHANGE .00  
7/27/13 19:53 0767 02 0630 9883

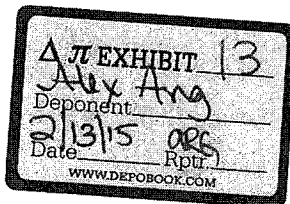
YOUR CASHIER TODAY WAS CHERYL

EMERSON ANG 6969

Your Savings

Card Savings 6.99  
Total 6.99  
Total Savings Value 19%

As of today, you have accumulated  
1 of 7 toward your free  
Signature Cafe Sandwich!



Rotten City Pizza #1  
Come back soon!  
6813 Hollis Street  
Eville, CA 94608  
(510) 655-2489

Server: Samrahit Station: 1

Order #: 182956 Dine In

>> SETTLED <<

1 Pepperoni 23.85  
1 Neopolitan Slice 2.98

Bar Subtotal: 0.00

Food Subtotal: 28.83

Tax 1: 2.41

TOTAL: \$29.24

Visa Tendered: 29.24

5667 XX/XX

ECC Tran ID: 51595627

CHANGE: 0.00

>> Ticket #: 71 <<

Created: 12/13/2013 2:20:01 PM

SETTLED: 12/13/2013 2:20:43 PM

THANK YOU!



Whole Foods Market, Oakland California  
230 Bay Place (510) 834-9800

0 92 LB @ 8.49 /lb 1001 - 05  
WWT HOT BRR 7.81 1  
ITEM # 95501

VF Debit 8.51

PIN USED

Accl # \*\*\*\*\*7156

Seq # 4451

\*\*\*\* TAX .70 BAL 8.51

Authorization #

CHANGE .00

TOTAL NUMBER OF ITEMS SOLD - 1  
12/16/13 12:05 PM 0460 14 0006 306

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EL CAMINO #4715

1600 EL CAMINO REAL  
SOUTH SAN FRANCISCO, CA 94080  
LW 0 ET 90-102232  
MEMBER #111781324132

41114 KSBUTTER WIR 6.99  
33712 CHUCK ROAST 8.26  
35059 FRYER THIGHS 11.31

TOTAL 6.99  
VF American Express 6.56

XXXXXXXXXXXX2002 SH PED  
07/11/13 16:01  
Seq#: 006278 App#: 525123  
American Express Resp: AN  
Tran ID#: 319235100000  
Merchant ID 99047511

APPROVED - PURCHASE  
AMOUNT: \$38.56

0475 003 000000056 0203

CHANGE .00

TOTAL NUMBER OF ITEMS SOLD - 3  
CASHIER: OSCAR E. REG# 3  
7/17/13 16:01 0475 03 0283 56

AA 0001



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## GROCERY

COCA COLA CLASSIC	1.79 B
CRV SFTDK SNGL TAX	.10 B
RegPrice	1.99
Card Savings	.20-
COKE ZERO CONTOUR	1.79 B
CRV SFTDK SNGL TAX	.10 B
RegPrice	1.99
Card Savings	.20-

## REFRIG/FROZEN

CREAM CHEESE	2.99 F
LARGE GRADE AA	2.69 F
CHALLENGE BUTTER	3.29 F
ORGANIC HALF & HAL	1.99 F
**** TAX	.33 BAL
VF DEBIT CARD	15.07

CHANGE .00  
7/05/13 12:07 0985 94 0074 8894

YOUR CASHIER TODAY WAS SELF

EMERSON ANG 6969

## Your Savings

Card Savings	.40
Total	.40
Total Savings Value	3%

As of today, you have accumulated  
1 of 7 toward your Free  
Signature Cafe Sandwich!

\*\*\*\*\*  
HOW WAS YOUR SHOPPING EXPERIENCE?  
PLEASE SHARE YOUR THOUGHTS ONLINE:  
ENTER TO WIN A \$100 GIFT CARD



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THANK YOU FOR SHOPPING WITH US!

## GROCERY

2 OZ CHICKEN CUBE	2.50 F
RegPrice	3.18
Card Savings	.68-
2 OZ BEEF CUBES	2.50 F
RegPrice	3.18
Card Savings	.68-

## REFRIG/FROZEN

1 CHEESE	2.99 F
RegPrice	2.99
Card Savings	.49-
ORGANIC HALF & HAL	3.19 F

## MEAT

FRYER THIGHS	5.73 F
FRYER THIGHS	4.92 F

## PRODUCE

MEDIUM CELERY	1.50 F
RegPrice	1.99
Card Savings	.49-
0.59 lb B \$1.49/lb	
WT U W SUT YLM ONION	.88 F
RegPrice	1.06
Card Savings	.18-
0.71 lb B \$0.99/lb	
WT CARROTS	.70 F
**** TAX	.00 BAL
VF VS XXXXXXXXXX5338	24.42

CHANGE .00  
7/06/13 18:54 0985 03 0257 8108

YOUR CASHIER TODAY WAS ADRIAN

EMERSON ANG 6969

## Your Savings

Card Savings	2.52
Total	2.62
Total Savings Value	9%

As of today, you have accumulated  
1 of 7 toward your Free  
Signature Cafe Sandwich!



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## GROCERY

SFWY PSIA FARFALE	1.00 F
RegPrice	1.49
Card Savings	.49-
NBC CRACKERS DYSTIE	3.59 F

## GROC NONEDIBLE

SFY ALUM FOIL	7.99 T
**** TAX	70 BAL
VF DEBIT CARD	13.28

CHANGE .00  
7/07/13 14:37 0985 02 0675 5584

YOUR CASHIER TODAY WAS PATRICIA

EMERSON ANG 6969

## Your Savings

Card Savings	.49
Total	.49
Total Savings Value	4%

As of today, you have accumulated  
1 of 7 toward your Free  
Signature Cafe Sandwich!

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## GROCERY

TRAILER SOUR BRITE	1.59 F
LAYS ONION & APRIL	2.59 F
RegPrice	4.29
Card Savings	1.30-
M&M'S PEANUT	4.49
RegPrice	4.49
Card Savings	.99-
COKE CLASSIC	1.79 F
CRV SFTDK SNGL TAX	.05 F
COKE ZERO	1.79 F
CRV SFTDK SNGL TAX	.05 F

## DELI

SC ONION BUNS	5.00 T
**** TAX	.75 BAL
VF VS XXXXXXXXXX5338	17.52
CHANGE	.00
7/26/13 18:21 2505 33 0263 8853	

YOUR CASHIER TODAY WAS SELF

EMERSON ANG 6969

## Your Savings

Card Savings	2.29
Total	2.29
Total Savings Value	12%

As of today, you have accumulated  
1 of 7 toward your Free  
Signature Cafe Sandwich!

\*\*\*\*\*  
HOW WAS YOUR SHOPPING EXPERIENCE?  
PLEASE SHARE YOUR THOUGHTS ONLINE:  
ENTER TO WIN A \$100 GIFT CARD

AA 0002



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THANK YOU FOR SHOPPING WITH US!

## GROCERY

TROLLIE SOUF APPLE	1	1
SFY OYSIER JUMBO	1	1
LAYS MSQT 4BJ K	3	1
ResPrice	3.49	
Card Savings	.49	
M&M'S PEANUT	5	4
ResPrice	6.59	
Card Savings	1.10	
3 QTY CHICKEN CURR	3	75
ResPrice	4.77	
Card Savings	1.02	
BEEF CUBES	1	25
ResPrice	1.59	
Card Savings	.34	
COCA COLA SODA		
CRV SFYOK 6 PK TAX		30
ResPrice	4.49	
Card Savings	.49	
GRD AUTO DRPB.82		

## REFRIG/FROZEN

LUC ICE CUBES 8x8	1	99
ResPrice	2.49	
Card Savings	.50	
DRYRS CKY N CREAM	4	99
ResPrice	5.99	
Card Savings	1.00	
HQRZ DRG H/H PINT	2	29

## MISCELLANEOUS

MR DSPSAL DRG CHARGE	10
**** TAX	47.11
VF DEBIT CARD	47.11

CHANGE .00

8/25/13 14:37 0985 03 0230 3660

YOUR CASHIER TODAY WAS UNUS

EMERSON ANG 6969

## Your Savings

Card Savings	4.94
Total	4.94
Total Savings Value	10%

As of today, you have accumulated  
1 of 7 toward your Free  
Signature Cafe Sandwich!



STORE MGR JIM TRUONG 415-665-4565  
THANK YOU FOR SHOPPING WITH US!

## GROCERY

SFY APPLE JUICE	2	79
QUAKER CHEWY CHOC	2	50
ResPrice	3.99	
Card Savings	1.49	

## REFRIG/FROZEN

AMERICAN SNG	4	99
CHEEDAR BAR MED	3	99
EGGO HOMESTYLE WF	3	79

## BAKED GOODS

FRENCH BAGUETTE	1	79
-----------------	---	----

## MEAT

RK BF RNO STRIPS	4	64
ResPrice	6.67	
Card Savings	.93	
FRYER THIGHS	4	13
ResPrice	4.47	
Card Savings	.34	

## PRODUCE

GREEN BELL PEPPER	1	00
ResPrice	1.50	
Card Savings	.50	
MEDIUM CELERY	1	50
ResPrice	1.99	
Card Savings	.49	
3.58 lb @ \$1.29 /lb		
WT RUSSET POTATOES	4	62

RED BELL PEPPERS	1	00
ResPrice	1.50	
Card Savings	.50	
1.13 lb @ \$1.49 /lb		
WT JUMBO YLW ONIONS	1	68
0.83 lb @ \$0.99 /lb		
WT CARROTS	82	
**** TAX	39.24	
VF DEBIT CARD	39.24	

CHANGE .00

8/20/13 20:09 0985 04 0425 5947

YOUR CASHIER TODAY WAS EO

EMERSON ANG 6969

## Your Savings

Card Savings	4.25
Total	4.25
Total Savings Value	10%

As of today, you have accumulated  
1 of 7 toward your Free  
Signature Cafe Sandwich!



STORE MGR JIM TRUONG 415-665-4565  
THANK YOU FOR SHOPPING WITH US!

## GROCERY

SFY BAY LEAVES	3	99
LAWRY'S MARINADE	2	99
ResPrice	3.69	
Card Savings	.70	

## PRODUCE

1.72 lb @ \$1.49 /lb		
WT JUMBO YLW ONIONS	2	56
1.09 lb @ \$0.99 /lb		
WT CARROTS	1	08
**** TAX	10.62	
VF DEBIT CARD	10.62	

CHANGE .00

7/12/13 17:19 0985 S2 0122 8852

YOUR CASHIER TODAY WAS SELF

EMERSON ANG 6969

## Your Savings

Card Savings	.70
Total	.70
Total Savings Value	6%

As of today, you have accumulated

## **EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ALEX ANG and LYNN STREIT,	)	
Individually and on behalf	)	
of all others similarly	)	
situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 13 CIV. 1196
	)	(WHO)
BIMBO BAKERIES U.S.A.,	)	
INC.,	)	
	)	
Defendant.	)	
_____	)	

DEPOSITION OF LYNN STREIT

February 11, 2015

Hanna Kim, CLR, CSR No. 13083  
388327



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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ALEX ANG and LYNN STREIT, )  
Individually and on behalf )  
of all others similarly )  
situated, )  
Plaintiffs, )  
vs. ) Case No. 13 CIV. 1196  
BIMBO BAKERIES U.S.A., ) (WHO)  
INC., )  
Defendant. )

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Videotaped deposition of LYNN STREIT,  
taken on behalf of the Defendant, taken  
at the law offices of Pratt & Associates,  
located at 1871 The Alameda, San Jose,  
California 95126, on Wednesday,  
February 11, 2015, beginning at  
10:20 a.m. to 5:49 p.m., before Hanna  
Kim, CLR, CSR No. 13083.

10:43 1 grain and you read the back of the label. That's what  
10:43 2 I --

10:43 3 A. I can't say specifically.

10:43 4 Q. As you sit here today, you recall ever doing  
10:43 5 that with respect to any product other than Sara Lee  
10:43 6 whole wheat bread?

10:43 7 A. Looking at it, like looking at the back of the  
10:43 8 label?

10:43 9 Q. That's my question.

10:43 10 A. Absolutely.

10:43 11 Q. As you -- that made a claim that it was an  
10:43 12 excellent source of whole grain? That's what we're  
10:44 13 narrowing the focus on.

10:44 14 A. I see. That I'm not sure of because everybody  
10:44 15 uses different words.

10:44 16 Q. You say "everybody uses different words."  
10:44 17 What do you mean?

10:44 18 A. Different brands say different things on the  
10:44 19 front that tout their benefits, if you will. So they  
10:44 20 would all be worded differently. So I can't say for a  
10:44 21 fact that it's excellent source of whole grains.

10:44 22 Q. Well, do you recall reading the back of a  
10:44 23 label for any product that made a statement other than  
10:44 24 it had no added sugar, was an excellent source of whole  
10:44 25 grain or was low or no fat?

12:49 1 Q. Do you recall Sara Lee 100 percent whole wheat  
12:49 2 bread ever being subject to a Safeway Club discount?

12:49 3 A. Not specifically.

12:49 4 Q. When you shopped at Safeway when your kids  
12:49 5 were living with you -- there is banging going on out  
12:49 6 there -- did you try to pick items that were subject to  
12:49 7 a Safeway Club card discount when you were shopping?

12:49 8 A. If there was something comparable, if it  
12:49 9 didn't -- if it was something I would have chosen  
12:49 10 anyway.

12:49 11 Q. If it was something you would have chosen  
12:49 12 anyway, you would buy it if it was subject to a club  
12:49 13 card discount?

12:49 14 A. Yes. It would be a bonus.

12:50 15 Q. All right. So you said that you bought Sara  
12:50 16 Lee 100 percent whole wheat bread because it was  
12:50 17 100 percent whole wheat, because it was soft and  
12:50 18 because your children liked it and because you could  
12:50 19 buy it at Safeway. Were there any other reasons --

12:50 20 A. Excuse me.

12:50 21 Q. -- that you bought Sara Lee 100 percent whole  
12:50 22 wheat bread?

12:50 23 A. Because it said it was an excellent source of  
12:50 24 whole grain.

12:50 25 Q. Why was that important to you?



12:50 1 A. It's healthier.

12:50 2 Q. How do you know that?

12:50 3 A. I just do.

12:50 4 Q. Has anyone ever told you that something that's  
12:50 5 an excellent source of whole grains is healthy for you?

12:50 6 A. It's all over TV, magazine covers, it's...

12:50 7 Q. Starting with has anybody told you that?

12:50 8 A. No.

12:50 9 Q. Have you read any articles that indicated that  
12:50 10 something that's an excellent source of whole grains is  
12:51 11 healthy for you?

12:51 12 A. Maybe sitting in a doctor's office, but I,  
12:51 13 again, can't cite anything specifically.

12:51 14 Q. Yeah, I'm not interested in -- in something  
12:51 15 that's theoretical. I want to know whether you recall  
12:51 16 as you sit here today --

12:51 17 A. No.

12:51 18 Q. -- whether you ever read any article that  
12:51 19 indicated to you that something that was an excellent  
12:51 20 source of whole grains was healthy for you.

12:51 21 A. Are you asking me to cite an article? I'm --  
12:51 22 I'm confused, because this is the kind of information  
12:51 23 that's just out there. Unless you're living under a  
12:51 24 rock, you know that whole grain is good for you.

12:51 25 Q. Sure. I'm not asking, at this point --

12:51 1 let's --

12:51 2 A. Okay.

12:51 3 Q. -- establish that you actually remember seeing  
12:51 4 an article, I would ask for information about it. But  
12:51 5 right now I want to find out where you got this  
12:51 6 information from other than the fact that it's out  
12:51 7 there. So we already established that you can't recall  
12:51 8 having anybody tell you that. So now I'm wondering  
12:51 9 whether you ever read it in an article.

12:52 10 A. I can't recall.

12:52 11 Q. Okay. Can you recall seeing any television  
12:52 12 programming about something that's an excellent source  
12:52 13 of whole grain being healthy for you?

12:52 14 A. Again, yes, but I can't say what program, news  
12:52 15 programs, morning programs, yeah.

12:52 16 Q. Do you recall, as you sit here today, any  
12:52 17 particular program conveying that information to you?

12:52 18 A. Specifically, no.

12:52 19 Q. Do you know what constitutes something being  
12:52 20 an excellent source of whole grain?

12:52 21 A. No.

12:52 22 Q. Do you know what amount of whole grain in a  
12:52 23 particular product you want to eat?

12:52 24 A. No.

12:52 25 Q. When you were shopping for Sara Lee

12:52 1 100 percent whole wheat bread, was there a particular  
12:52 2 amount of whole grain that you were hoping the bread  
12:52 3 had?

12:53 4 A. No.

12:53 5 Q. When you were shopping for whole wheat bread,  
12:53 6 between 2008 and 2012, was there any particular amount  
12:53 7 of or type of whole grain that you wanted to eat?

12:53 8 A. No.

12:53 9 Q. What other foods with whole grains in them did  
12:53 10 you purchase for your children?

12:53 11 A. I think bread is the main source. I can't  
12:53 12 think of anything specifically.

12:53 13 Q. Was Milton's an excellent source of whole  
12:53 14 grains, to your knowledge?

12:53 15 A. Probably. That's my perception. How it --  
12:53 16 yeah, that's my perception.

12:54 17 Q. Okay. Why did you have that perception?

12:54 18 A. It -- it has, like I said, all the nuts and  
12:54 19 seeds and it just looks healthy.

12:54 20 Q. I'm not asking whether it's healthy --

12:54 21 A. And it tastes like it, too.

12:54 22 Q. Why does it taste like it's healthy?

12:54 23 A. I don't know. That's a good question. I  
12:54 24 don't know.

12:54 25 Q. I'm not asking whether it -- it was healthy.

12:54 1 I'm asking whether it was an excellent source of whole  
12:54 2 grains in particular.

12:54 3 A. I'm not an expert, but I feel like it is.

12:54 4 Q. Because it had the nuts and seeds on it --

12:54 5 A. Mm-hmm, correct. Oh. Yes.

12:54 6 Q. What nuts are whole grains, to your knowledge?

12:54 7 A. I have no idea.

12:54 8 Q. What seeds are whole grains, to your  
12:55 9 knowledge?

12:55 10 A. I would assume any seeds, but, again, I don't  
12:55 11 know.

12:55 12 Q. What do you understand a whole grain to be?

12:55 13 A. A nut that's made into a flour. That's -- and  
12:55 14 I could be completely wrong, but that's my...

12:55 15 Q. And so you understand a whole grain to be a  
12:55 16 nut?

12:55 17 A. No, that doesn't make sense. I'm thinking of  
12:55 18 the seeds on the outside of the bread. No, because  
12:55 19 wheat is not a nut. So I don't know.

12:55 20 Q. Do you have an understanding of what a whole  
12:55 21 grain is, ma'am?

12:55 22 A. Nope.

12:55 23 Q. The bagels that you bought at Safeway, were  
12:55 24 those Safeway bagels?

12:55 25 A. At Safeway? No, it was a variety. It would

01:22 1 Q. -- Hill and then Target/Cos- -- Lucky.

01:22 2 A. Yes.

01:23 3 Q. Is that fair?

01:23 4 A. Yes.

01:23 5 Q. And, again, you don't have any estimate for me

01:23 6 with respect to how much you spent at all those stores

01:23 7 on any baked products, correct?

01:23 8 A. No.

01:23 9 Q. That's not correct?

01:23 10 A. I mean -- oh, sorry. No, I don't have an

01:23 11 estimate.

01:23 12 Q. Thank you.

01:23 13 Did you ever return any of the Sara Lee

01:23 14 products that you purchased?

01:23 15 A. I don't think so.

01:23 16 Q. Did you ever return any of the Thomas'

01:23 17 products that you purchased?

01:23 18 A. I don't think so.

01:23 19 Q. Your family ate those products after you

01:23 20 purchased them?

01:23 21 A. Until I threw away what was left, yes.

01:23 22 Q. And you threw it away because it had become

01:24 23 stale --

01:24 24 A. Yes.

01:24 25 Q. -- or moldy or was otherwise --

02:11 1 Q. Does anybody in your family, including  
02:11 2 yourself, have a soy allergy?

02:11 3 A. No, not that I know of.

02:11 4 Q. What products have you bought, to your  
02:11 5 knowledge, with soy in them?

02:11 6 A. When I had the yogurt shop, there was a new  
02:12 7 product out called Tofutti, and it was made from soy.

02:12 8 Q. Other than Tofutti, have you ever purchased  
02:12 9 any soy products or products in -- that include soy?

02:12 10 A. Not that I recall.

02:12 11 Q. Have you ever --

02:12 12 A. Excuse me, fresh edamame. That's soybeans,  
02:12 13 right? Okay.

02:12 14 Q. Anything else?

02:12 15 A. No.

02:12 16 Q. Have you ever checked any label of any food  
02:12 17 product that you've bought to make sure that it did not  
02:12 18 have soy in it?

02:12 19 A. No.

02:12 20 Q. The Sara Lee bread products that you bought  
02:12 21 when your kids were living with you, did you also eat  
02:12 22 those or were those just for your kids?

02:12 23 A. I ate a minimal amount compared to my kids.

02:12 24 Q. Well, that's just necessarily true. But what  
02:12 25 do you mean by "minimal amount"?

02:32 1 positives.

02:32 2 Q. What other statements led you to those  
02:32 3 products?

02:32 4 A. Baked fresh daily.

02:32 5 Q. Any other statements?

02:33 6 A. Not specifically.

02:33 7 Q. Do you have any reason to believe that Sara  
02:33 8 Lee 100 percent whole wheat bread is not 100 percent  
02:33 9 whole wheat?

02:33 10 A. Yes.

02:33 11 Q. What is that based on?

02:33 12 A. I have found out, since I brought this to  
02:33 13 Pierce's attention, that there's other things in it.  
02:33 14 There's soy and other products that make it not  
02:33 15 100 percent whole wheat, in my opinion.

02:33 16 Q. What about soy makes it not 100 percent whole  
02:33 17 wheat?

02:33 18 A. Just the very fact that it's in there. It's a  
02:33 19 soy flour, not a wheat flour.

02:33 20 Q. Do you understand that soy is a grain?

02:33 21 A. But it's not whole wheat.

02:33 22 Q. That wasn't my question.

02:33 23 A. Yes. Sorry. To answer your question, yes.

02:34 24 Q. Do you -- do you understand that soy is a  
02:34 25 grain?

02:41 1 A. No.

02:41 2 Q. Let's start with that.

02:41 3 A. Okay.

02:41 4 Q. Then we can get into why it was mislabeled.

02:41 5 A. No.

02:41 6 Q. So as you sit here today, you can't recall any  
02:41 7 instance in which you refused to buy a product because  
02:41 8 it was mislabeled, correct?

02:41 9 A. Correct.

02:41 10 Q. Okay. What leads you to believe that Sara Lee  
02:42 11 100 percent whole wheat bread is not an excellent  
02:42 12 source of whole grains?

02:42 13 A. Since I brought this matter to the attention  
02:42 14 of this office, I found out that it does not meet  
02:42 15 certain FDA and other guidelines to be qualified as  
02:42 16 100 percent whole wheat.

02:42 17 Q. My question is hundred -- is an excellent  
02:42 18 source of whole grain.

02:42 19 A. Excellent source of whole grain. Sorry.  
02:42 20 Wrong one.

02:42 21 Q. So what led you to believe that the product  
02:42 22 had -- was not an excellent source of whole grains?

02:42 23 A. What led me to believe?

02:42 24 Q. Yes.

02:42 25 MR. GORE: I'm going to object to the question



02:43 1 A. Yes.

02:43 2 Q. Okay. Do you know what products do provide an  
02:43 3 excellent source of whole grains?

02:43 4 A. No.

02:43 5 Q. Have you ever bought any products that are an  
02:43 6 excellent source of whole grains?

02:43 7 A. I would assume so, but I can't specifically  
02:43 8 identify them.

02:43 9 Q. And I asked you this before, but let's just be  
02:44 10 clear. You don't know what amount of whole grains  
02:44 11 would constitute an excellent source of whole grains,  
02:44 12 correct?

02:44 13 A. No, I do not know.

02:44 14 Q. Okay. And you don't -- same questions for  
02:44 15 good source of whole grain. Have -- do you know what  
02:44 16 constitutes a good source of whole grains?

02:44 17 A. I do not.

02:44 18 Q. Do you know whether you have purchased any  
02:44 19 products that are a good source of whole grains?

02:44 20 A. I would assume, but I do not know  
02:44 21 specifically.

02:44 22 Q. And those products would be the same products  
02:44 23 you told me about earlier, which are the -- the bread  
02:44 24 with the seeds on the outside?

02:44 25 A. That's correct.

02:45 1 Q. What bread would you have bought instead of  
02:46 2 Sara Lee 100 percent whole wheat bread that would have  
02:46 3 been a good source of whole grains?

02:46 4 A. I don't know.

02:46 5 Q. Do you know whether that product would have  
02:46 6 been less expensive than the Sara Lee product?

02:46 7 A. I have no idea.

02:46 8 Q. How much did you pay for any Sara Lee bread  
02:46 9 product?

02:46 10 A. No idea.

02:46 11 Q. How much did you pay for any Entenmann's  
02:46 12 product?

02:46 13 A. Don't know.

02:46 14 Q. Do you have any documents that indicate that  
02:46 15 you bought any Sara Lee products?

02:46 16 A. No. I don't save grocery receipts.

02:46 17 Q. Do you have any documents that indicate that  
02:46 18 you bought any Entenmann's products?

02:46 19 A. Same thing; no.

02:46 20 Q. Do you have any -- let's just try to shortcut  
02:46 21 this. Did you -- do you have any documents anywhere  
02:46 22 that indicate that you ever purchased any Bimbo  
02:47 23 Bakeries products?

02:47 24 A. No.

02:47 25 Q. Exhibit 1 lists a number of other products

03:31 1 Q. The first page of the classic 100 percent  
03:31 2 whole wheat pictures shows a -- it says it's heart  
03:31 3 healthy. Do you have any reason to believe that this  
03:31 4 isn't heart healthy?

03:31 5 A. No.

03:31 6 Q. Do you have any reason to believe that this  
03:31 7 bread does not provide a good source of whole grain?

03:32 8 A. Now I do.

03:32 9 Q. What do you mean?

03:32 10 A. Because you're asking -- you're asking what I  
03:32 11 think now.

03:32 12 Q. Okay. I'm asking whether you have any reason  
03:32 13 to believe that this bread does not provide a good  
03:32 14 source of whole grain.

03:32 15 MR. GORE: I'll object only to the extent --

03:32 16 THE WITNESS: I'm so confused.

03:32 17 MR. GORE: -- that your question calls for --

03:32 18 THE WITNESS: Sorry.

03:32 19 MR. GORE: -- communications protected by the  
03:32 20 attorney-client privilege.

03:32 21 Otherwise, you may answer.

03:32 22 THE WITNESS: I have come to find out that the  
03:32 23 claims are not entirely true.

03:32 24 BY MR. GOODMAN:

03:32 25 Q. Did you find that out from your lawyer?

03:32 1 A. Yes.

03:32 2 Q. Did you find that out from any other source?

03:32 3 A. No.

03:32 4 Q. Do you know how the claims made, that it's a  
03:32 5 good source of whole grain, are not true? That's just  
03:33 6 a yes or no.

03:33 7 A. No. It's getting too scientific.

03:33 8 Q. Do you know whether this classic 100 percent  
03:33 9 whole wheat bread provides whole grains that are a --  
03:33 10 less than a good source?

03:33 11 A. Specific whole grain, no.

03:33 12 Q. Do you know if this is a poor source of whole  
03:33 13 grains?

03:33 14 A. I do not know.

03:33 15 Q. Do you know if it's an excellent source of  
03:33 16 whole grains?

03:33 17 A. Again, don't know.

03:33 18 Q. The next set of pictures is for a Boboli  
03:33 19 original crust. Can you keep these in order, please?

03:33 20 A. Well, I pulled out the ones that are  
03:33 21 pertinent --

03:33 22 Q. Yeah, I know.

03:33 23 A. Sorry.

03:33 24 Q. Can you put them back in order?

03:34 25 A. Yes. Yes. Okay. I can do that. Okay. Got

03:39 1 A. No. There was not that expectation with  
03:39 2 those.

03:39 3 Q. Do you know whether any other donuts -- brand  
03:39 4 named donuts sold in a store are baked fresh daily?

03:39 5 A. I don't know.

03:39 6 Q. Do you know whether any brand bakery goods  
03:39 7 sold in a store are bake -- baked fresh daily?

03:39 8 A. Brand bakery goods, meaning outside of the  
03:39 9 internal bakery within the store?

03:39 10 Q. Yes, ma'am.

03:39 11 A. I do not know.

03:39 12 Q. Have you ever sought out any brand bakery  
03:39 13 goods -- those are brands that are outside of the store  
03:39 14 brand -- that say "baked fresh daily" on them?

03:39 15 A. Not specifically.

03:40 16 Q. Other than the labels that you just identified  
03:40 17 in these pictures, have you provided or do you have in  
03:40 18 your possession, custody or control, any other  
03:40 19 packaging related to Bimbo Bakeries products?

03:40 20 A. No.

03:40 21 Q. Other than the products that you purchased and  
03:40 22 gave to Mr. Gore, did you ever purchase any Bimbo  
03:40 23 Bakeries products that you did not actually use as a  
03:40 24 consumer?

03:40 25 A. Not that I know of. And let me clarify one

05:17 1 products have been represented to have a characteristic  
05:17 2 that they don't actually have?

05:17 3 A. I believe so.

05:17 4 Q. Okay. What characteristic?

05:17 5 A. One hundred percent whole wheat.

05:17 6 Q. Anything else?

05:17 7 A. Excellent source of whole grain.

05:17 8 Q. Anything else?

05:18 9 A. Good source of whole grain.

05:18 10 Q. And we talked about your understanding about  
05:18 11 those terms --

05:18 12 A. Right.

05:18 13 Q. -- before. Is there anything else you want to  
05:18 14 add to your testimony about that?

05:18 15 A. About?

05:18 16 Q. Your understanding of what a hundred percent  
05:18 17 whole wheat is or should be.

05:18 18 A. I can't think of anything else.

05:18 19 Q. What about source of whole grains? Is there  
05:18 20 anything you want to add to your testimony about that?

05:18 21 A. Other than my confusion about what a grain is.

05:18 22 I think I inadvertently referred to soy as a grain.

05:18 23 It's a bean, soybean. So I clarified buying soybeans.

05:18 24 So soy is not a whole grain.

05:18 25 Q. Okay. Anything else?

05:27 1 MR. GOODMAN: Same objections.

05:27 2 THE WITNESS: Many years.

05:27 3 BY MR. GORE:

05:27 4 Q. Approximately beginning when?

05:27 5 MR. GOODMAN: Same objections. Calls for  
05:27 6 speculation. Lacks foundation.

05:27 7 THE WITNESS: When my kids were young, so say  
05:27 8 2000.

05:27 9 BY MR. GORE:

05:27 10 Q. Okay. Now, when you purchased this product  
05:27 11 for personal consumption, did you read and rely on any  
05:27 12 parts of the label on this package?

05:27 13 A. Yes.

05:28 14 Q. What --

05:28 15 A. The front.

05:28 16 Q. Okay. Did you read and rely on any specific  
05:28 17 parts on the front of this package?

05:28 18 A. Def-

05:28 19 MR. GOODMAN: Overbroad. Lacks foundation.  
05:28 20 It's also leading.

05:28 21 THE WITNESS: Definitely, 100 percent whole  
05:28 22 wheat and good source of whole grain.

05:28 23 BY MR. GORE:

05:28 24 Q. Okay. I'm going to ask you to take my pen,  
05:28 25 and I want you to circle the parts of the label on this

05:28 1 package that you read and relied on when making your  
05:28 2 purchase decision, please.

05:28 3 Okay. Thank you. Now, what you've circled  
05:28 4 here is a part of the label that says "100 percent  
05:29 5 whole wheat. My question is, when you read that on the  
05:29 6 label, what did it mean to you?

05:29 7 MR. GOODMAN: Asked and answered.

05:29 8 THE WITNESS: That bread was made from  
05:29 9 100 percent whole wheat flour.

05:29 10 BY MR. GORE:

05:29 11 Q. You also circled "good source of whole grain."  
05:29 12 When you read and relied on that part of the label,  
05:29 13 what did it mean to you?

05:29 14 MR. GOODMAN: Asked and answered.

05:29 15 THE WITNESS: Exactly what it says, that it  
05:29 16 was a healthy choice, good source of whole grain.

05:29 17 BY MR. GORE:

05:29 18 Q. When you purchased this -- this product for  
05:29 19 consumption by you and your family, did you turn it  
05:29 20 over every time and read the ingredient list?

05:29 21 A. No.

05:29 22 Q. Why not?

05:29 23 A. Because the front told me what I needed to  
05:29 24 know.

05:29 25 Q. How did reading these parts of the label



05:33 1 particular Bimbo product?

05:33 2 MR. GOODMAN: Leading.

05:33 3 THE WITNESS: No.

05:33 4 BY MR. GORE:

05:33 5 Q. Are all of the products that are the subject  
05:33 6 of your claims in this lawsuit products that you  
05:33 7 purchased for years for consumption by yourself and for  
05:33 8 your family?

05:33 9 MR. GOODMAN: Leading. Misstates testimony.

05:33 10 THE WITNESS: Yes.

05:33 11 BY MR. GORE:

05:33 12 Q. I want you to take my pen and I want you to  
05:33 13 circle on Exhibit No. 12 the portions of the label that  
05:33 14 you read and relied on when you purchased Sara Lee  
05:34 15 100 percent whole wheat bread, please.

05:34 16 Okay. Thank you. And you've circled two  
05:34 17 things. One a "100 percent whole wheat." When you  
05:34 18 read and relied on that portion of the label -- strike  
05:34 19 that.

05:34 20 Did you read and rely on that portion of the  
05:34 21 label when you decided to purchase Sara Lee 100 percent  
05:34 22 whole wheat bread?

05:34 23 A. Yes.

05:34 24 Q. When you read that portion of the label, what  
05:34 25 did it mean to you?

05:34 1 A. That the bread was made with 100 percent whole  
05:34 2 wheat flour.

05:34 3 Q. And the other thing that you circled, that  
05:34 4 it's an excellent source of whole grain --

05:34 5 A. Yes.

05:34 6 Q. -- did you read and rely on that portion of  
05:34 7 the label?

05:34 8 A. Yes.

05:34 9 Q. What did that mean to you?

05:34 10 A. That it's an even better source of whole grain  
05:34 11 than the other bread, so that it's an excellent source.

05:34 12 Q. Okay. Do you know the difference between the  
05:34 13 legal requirements for bread to be labeled "excellent"  
05:34 14 or "good source of whole grain"?

05:35 15 A. I have no idea.

05:35 16 Q. Okay. How did reading these portions of the  
05:35 17 label affect your purchase decision?

05:35 18 A. They affected greatly.

05:35 19 The -- these two also affected it. However,  
05:35 20 we're not -- I'm not arguing this.

05:35 21 Q. Okay. Okay.

05:35 22 A. So...

05:35 23 MR. GOODMAN: Anything else you want to point  
05:35 24 her to?

05:35 25 THE WITNESS: I couldn't hear that.

05:41 1 lawsuit?

05:41 2 A. For the packages to be corrected.

05:41 3 Q. Are you seeking any money?

05:41 4 A. No.

05:41 5 Q. Are you seeking any money on behalf of the  
05:41 6 class members in this case?

05:41 7 A. I think that's part of -- I mean, I think  
05:41 8 that's what happens. I think people should get some  
05:41 9 sort of a refund for the packages they purchased.

05:41 10 Q. How much of a refund?

05:41 11 A. That's not up to me. I don't know.

05:42 12 MR. GORE: That's all I have.

05:42 13 FURTHER EXAMINATION

05:42 14 BY MR. GOODMAN:

05:42 15 Q. I have some follow-up on that, Ms. Streit.

05:42 16 A. Yes.

05:42 17 Q. How do you know that Exhibit 13 is the Softees  
05:42 18 box that you gave to Mr. Gore as opposed to some other  
05:42 19 box of Softees?

05:42 20 A. Well, I brought it in to him, so --

05:42 21 Q. How do you know you brought in that box,  
05:42 22 ma'am, is my question, as opposed to another box?

05:42 23 A. Well, the expiration date looks like it's in  
05:42 24 the right time frame, but I don't even know. I mean,  
05:42 25 any -- anything is possible. Someone can break in here

05:42 1 and take things out and replace it.

05:42 2 Q. Ma'am, how do you know that that's the box  
05:42 3 that you gave to Mr. Gore? That's my question.

05:43 4 A. Because I trust him.

05:43 5 Q. Anything else? Is there any other way that  
05:43 6 you know that that's the box that you gave to Mr. Gore?

05:43 7 A. Nope.

05:43 8 Q. Okay. When you say you trust him, what do you  
05:43 9 mean? Is he the one who's testifying today that that's  
05:43 10 the box that you gave to him?

05:43 11 A. I trust the things I give him and tell him are  
05:43 12 treated honestly and respectfully.

05:43 13 Q. How do you know that Exhibit 11 is the bag of  
05:43 14 bread -- or the bag from the bread that you gave him,  
05:43 15 as opposed to some other bag of Sara Lee 100 percent  
05:43 16 whole wheat bread?

05:43 17 A. Same reasons.

05:43 18 Q. So you don't know that this is the actual bag,  
05:43 19 other than you trust Mr. Gore, correct?

05:43 20 A. It doesn't have my signature on it, so -- I  
05:43 21 mean, I think that's just a weird question. Sorry.

05:43 22 Q. That's great, ma'am. I'll move to strike that  
05:43 23 as nonresponsive.

05:43 24 A. Okay.

05:43 25 Q. If you could just answer the question. I'm

05:43 1 not asking for your opinion as to my question. I'm  
05:43 2 asking you whether you know that this bag, Exhibit 11,  
05:43 3 is the bag of bread that you gave to Mr. Gore, as  
05:44 4 opposed to a different bag from a loaf of 100 percent  
05:44 5 whole wheat Sara Lee bread.

05:44 6 A. Yes.

05:44 7 Q. You know that that's the same bag?

05:44 8 A. Same reasons.

05:44 9 Q. How do you know?

05:44 10 A. Same reasons.

05:44 11 Q. How do you know, ma'am?

05:44 12 A. Because I gave it to him. I -- I'm sorry.

05:44 13 I'm finding this argumentative, too.

05:44 14 Q. Are you objecting to my question, ma'am?

05:44 15 A. Can I do that?

05:44 16 Q. No.

05:44 17 Do you know -- did you make any markings on  
05:44 18 the bag that you gave to Mr. Gore?

05:44 19 A. I did not.

05:44 20 Q. Did you make any note of the bag that you gave  
05:44 21 to Mr. Gore to determine that this very bag is the bag  
05:44 22 of bread that you gave to him?

05:44 23 A. I did not.

05:44 24 Q. Okay. So other than the fact that you trust  
05:44 25 Mr. Gore, how do you know that this is the very bag

05:44 1 that you gave to Mr. Gore?

05:44 2 A. Same thing.

05:44 3 Q. You don't. There's no other reason other than  
05:44 4 you trust him, correct?

05:44 5 A. I guess, yeah.

05:44 6 Q. Okay. Same answers --

05:45 7 A. He can't lie.

05:45 8 Q. -- for Exhibit 12?

05:45 9 A. Yeah, yes.

05:45 10 Q. Okay. Is there any wheat flour in the bread  
05:45 11 that was in either Exhibit 11 or Exhibit 12 that was  
05:45 12 other than whole wheat flour?

05:45 13 A. Yes.

05:45 14 Q. Okay. What wheat flour was in Exhibit 11 that  
05:45 15 was something other than whole wheat flour?

05:45 16 A. Soy flour. Can I look at the label and make  
05:45 17 sure it's the right one?

05:45 18 Q. I'm asking you, ma'am --

05:45 19 A. Okay.

05:45 20 Q. If you'd listen to my question. Is there any  
05:45 21 wheat flour in Exhibit 11, the bread that was in  
05:45 22 Exhibit 11, other than whole wheat flour --

05:45 23 A. Oh.

05:45 24 Q. -- to your knowledge?

05:45 25 A. I do not know.

DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA        }  
                                  }     ss.  
COUNTY OF CONTRA COSTA   }

I, Hanna Kim, hereby certify:

I am a duly qualified Certified Shorthand Reporter in the State of California, holder of Certificate Number CSR 13083 issued by the Court Reporters Board of California and which is in full force and effect. (Fed. R. Civ. P. 28(a)).

I am authorized to administer oaths or affirmations pursuant to California Code of Civil Procedure, Section 2093(b) and prior to being examined, the witness was first duly sworn by me. (Fed. R. Civ. P. 28(a), 30(f)(1)).

I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in this action. (Fed. R. Civ. P. 28).

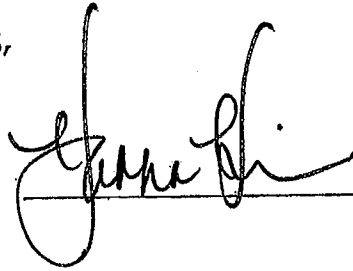
I am the deposition officer that stenographically recorded the testimony in the foregoing deposition and the foregoing transcript is a true record

/ / /

1 of the testimony given by the witness. (Fed. R. Civ. P.  
2 30(f)(1)).

3 Before completion of the deposition, review of  
4 the transcript [xx] was [ ] was not requested. If  
5 requested, any changes made by the deponent (and  
6 provided to the reporter) during the period allowed, are  
7 appended hereto. (Fed. R. Civ. P. 30(e)).

8  
9 Dated: February 26, 2015,

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## EXHIBIT C

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1 This transcript has not been proofread or  
2 corrected. It is a draft transcript, NOT a  
3 certified transcript. This draft may contain  
4 computer-generated mistranslations of stenotype  
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10 resulting in differences in page and line  
11 numbers, punctuation and formatting.

12

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14 ORDER FOR THE FINAL CERTIFIED TRANSCRIPT AND IS  
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18 CERTIFIED TRANSCRIPT IS THE ONLY OFFICIAL  
19 TRANSCRIPT WHICH MAY BE RELIED UPON FOR PURPOSES  
20 OF VERBATIM CITATION OF TESTIMONY.

21

22 Daria L. Romano  
23 Registered Professional Reporter  
24 Certified Realtime Reporter  
25 UNITED STATES DISTRICT COURT

♀

3



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5 404 Court Square North  
6 Lexington, MS 39095  
7 (662) 834-2488  
8 bherrington@barrettlawgroup.com  
9 for the Plaintiffs.

10

11 HOGAN LOVELLS US LLP  
12 (by David W. Skaar, Esq.)  
13 1999 Avenue of the Stars, Suite 1400  
14 Los Angeles, California 90067  
15 (310) 785-4600  
16 david.skaar@hoganlovells.com  
17 for the Defendant.

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1 I N D E X  
2 Deposition of: Page  
3 DR. JULIE A. CASWELL  
4 By Mr. Skaar ^

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E X H I B I T S

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22 Q. But that's not my question. I'm going  
23 to make a motion to strike as nonresponsive.  
24 You mentioned in your list of  
25 nutrients things like fat, things like vitamins,

37

1 right?

2 A. Mm-hmm.

3 Q. Iron, fiber, whole grains are not on  
4 that list, are they?

5 A. That's true.

6 Q. Let's go to paragraph 10 of your  
7 declaration on page three. You say consumers  
8 are economically harmed if the information they  
9 rely on such as product labeling is false or  
10 misleading. Do you see that in the first  
11 sentence?

12 A. Yes.

13 Q. So that sentence assumes that in order  
14 to be harmed, you have to rely on product  
15 labeling; is that right?

16 A. Yes.

17 Q. And so it follows that if someone does  
18 not rely on products labeling, they are not  
19 harmed, right?

20 A. Yes.

21 Q. And you'd agree generally that if you  
22 eat a product, you do get some value from it,  
23 right?

24 MR. HERRINGTON: Object to the  
25 form.

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1 A. How would you define value?

2 Q. I'll give you some examples. You get  
3 the enjoyment of the products, the taste of the  
4 product?

5 A. Yes.

6 Q. You get certain nutrients from the  
7 product?

8 A. Yes.

9 Q. You get the feeling of satiety in your  
10 appetite, right?

11 A. Yes.

12 Q. And those things have some value,  
13 right?

14 MR. HERRINGTON: Object to the  
15 form.

16 A. Yes.

17 Q. So how when you have someone who in  
18 your words is harmed by labels on a product, how  
19 do you measure that? How do you measure how  
20 they're harmed?

21 A. You measure how they're harmed by what  
22 their alternative choice could have been. So  
23 are they buying a product that is not -- does  
24 not have the quality characteristics or quality  
25 attributes that they think it has, in which case

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8 relied on these labels, right?

9 A. Not these particular labels, but  
10 there's much research showing that consumers use  
11 labels.

12 Q. I understand what the research shows,  
13 what I'm asking is whether you've seen any  
14 survey evidence or any other evidence that  
15 specifically indicates that consumers in  
16 California read and relied on these labels?

17 A. I've not seen a specific study related  
18 to these particular labels.

19 Q. And you didn't do such a study in this  
20 case, right?

21 A. I did not.

22 Q. Okay. In the last sentence of  
23 paragraph 10 you give an example of a consumer  
24 who's following a specific diet. Do you  
25 understand -- do you have an understanding of

42

1 whether that is an issue for either of the two  
2 named plaintiffs in this case?

3 A. No.

4 Q. You don't know specifically if either  
5 one of them were on a specific diet, right?

6 A. I do not.

7 Q. Okay. Do you know if any particular  
8 consumers were unable to stay on a particular  
9 diet because of the labels in this case?

10 A. No.

11 Q. And there's no -- you are not aware of  
Page 36

0401caswell

5 Q. So let's go down to paragraph 21 which  
6 begins on page five and goes over into page six.  
7 In this paragraph you talk about how a  
8 certification system can improve the information  
9 that's available to consumers, right?

10 A. Yes.

11 Q. And you say it can do that if the  
12 certification system is reliable, right?

13 A. Yes.

14 Q. Do you have any opinion regarding the  
15 reliability of the AHA heart check certification  
16 program?

17 A. I haven't looked at it. I presume  
18 given the organization that it is a reputable  
19 certification.

20 Q. You don't have any reason to believe  
21 it's not reliable, right?

22 A. That's true.

23 Q. And here reliability until this  
24 context, you say it's particularly important for  
25 credence attributes because consumers can't

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1 judge them for themselves, right?

2 A. Yes.

3 Q. And so its reliability is an issue  
4 because here we are appropriate talking about  
5 labeling that converts credence attributes into  
6 search attributes, right?

7 A. Yes.



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5 A. Yes, my general knowledge from the  
6 past being aware of this claim that it's a paid  
7 endorsement.

8 Q. Have you worked on other cases  
9 involving the American heart association heart  
10 check mark?

11 A. I think there were one or two, yes.

12 Q. Do you remember what those were?

13 A. I don't off the top of my head.

14 Q. Were they cases in California?

15 A. Yes.

16 Q. Were they cases where you were  
17 disclosed as an expert witness?

18 A. Yes.

19 Q. And did those cases involve whether  
20 the AHA heart check mark was a paid endorsement?

21 A. I don't recall.

22 Q. Have you read any of the American  
23 heart association's literature on the heart  
24 check mark program?

25 A. No.

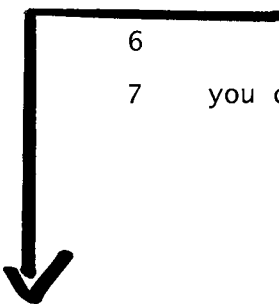
86

1 Q. would it surprise you if the  
2 literature indicates that the payment is for an  
3 administrative fee to cover administrative costs  
4 for the program?

5 A. No.

6 Q. And it's not your opinion, right, that  
7 you can just give the American heart association

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0401caswell  
8 money in exchange for putting this mark on your  
9 product regardless of your product's nutrition  
10 qualities, right?  
11 MR. HERRINGTON: Object to the  
12 form.  
13 A. Right, yes. So we've addressed that I  
14 believe it's a reliable certification.  
15 Q. Which means that there are criteria  
16 that your product must meet in order to qualify  
17 for it, right?  
18 A. Yes.  
19 Q. Okay. Do you know if there are any  
20 products on the market that say that the  
21 American heart association heart check mark is a  
22 paid endorsement on the label?  
23 A. I don't know that.  
24 Q. Are you rendering an opinion in this  
25 case regarding whether excellent source of whole

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1 grain or good source of whole grain are  
2 misleading statements?  
3 A. My opinion is that they are material  
4 to consumers.  
5 Q. So the answer is no, that you are not  
6 rendering an opinion on whether those are false  
7 and misleading, right?  
8 A. Right, correct.  
9 Q. Okay. Are you rendering an opinion in  
10 this case as to whether the 100 percent whole  
11 wheat products contain false and misleading

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1 A. No.

2 Q. And a consumer's needs -- so a  
3 consumer's needs would be a factor in  
4 determining what part of the labels are material  
5 to them, right?

6 A. It's a factor in which what pieces of  
7 information are important to them, but it's  
8 material information because it's available to  
9 them in making their purchase decision.

10 Q. So how do you distinguish between  
11 what's material and what's important?

12 A. I don't.

13 Q. They're the same, right?

14 A. It's material if it is information  
15 that's available to the consumer to be used in  
16 evaluating and buying the product.

17 Q. But you just testified that or correct  
18 me if I'm wrong, but you just testified that  
19 what is important to someone with respect to a  
20 particular label will depend on that consumer's  
21 needs for a particular product, right?

22 A. Yes.

23 Q. So it's material -- the same question,  
24 really, what's material to a consumer will  
25 depends on what their needs are for a particular

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1 product, right?

2 A. No. The piece of information is  
3 material because it is available on the label,  
4 it's available to influence the decision and

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5 it's material because of its placement and its  
6 availability to consumers and it's not --  
7 whether it's important to you doesn't make it  
8 material or not material.

9 Q. So materiality has nothing to do with  
10 what's actually influencing consumers to buy  
11 products?

12 A. It has to do with the set of  
13 information that's available to consumers when  
14 they're buying products.

15 Q. So when you say that a statement on a  
16 label is material, you are not rendering an  
17 opinion that that statement is actually  
18 contributing to people buying the products,  
19 right?

20 A. It's contributing -- I'm saying that  
21 it's contributing to the information that they  
22 have available to them in deciding whether to  
23 buy the product.

24 Q. But not whether anyone is actually  
25 using the information to inform their buying

1 decisions?

2 A. Not whether any particular person is  
3 using that piece of information.

4 Q. Or even groups of people?

5 A. well, several particular people would  
6 make a group.

7 Q. Right. So the answer is no, that

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12 Q. I think we just might have talked  
13 about the opposite con September. You talked  
14 about an indication of materiality. I'm more  
15 focused on your definition of materiality and  
16 how you come to the conclusion that something is  
17 material, and I think you explained before that  
18 materiality is based on the information that's  
19 available to consumers on a label, right?

20 A. That's correct.

21 Q. So materiality does not tell us  
22 whether an individual or group of individuals  
23 actually read and rely on that label?

24 A. That's correct.

25 Q. So let's talk about consumer needs a

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1 little bit more. If a person doesn't have a  
2 particular need regarding, you know, the whole  
3 great content of their products, you wouldn't  
4 expect a statement such as good source of whole  
5 grains to factor into that person's decision to  
6 buy the product, would you?

7 A. I think that all consumers are  
8 potentially interested in the whole grain status  
9 of the product, so the labeling can communicate  
10 to consumers who are particularly interested in  
11 that quality attribute, but it can communicate  
12 and does communicate to the general consumer,  
13 the whole class of consumers.

14 Q. What I've posed to you is a

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5 Q. But the label does say that, right?

6 A. On the back panel or side panel.

7 Q. It says the product provides 14 grams  
8 of whole grain, it says that on the panel right  
9 below nutrition facts, right?

10 A. Yes, on the side or back panel.

11 Q. And we don't know which one, right?

12 A. Well, it appears to be the side.

13 Q. And we can't see based on this photo  
14 on the first page, it doesn't appear that this  
15 depicts the entire loaf of bread, right?

16 A. I don't know what's down here, yeah.

17 Q. Okay. Are there any statements on  
18 this label, going back to that classic  
19 100 percent whole wheat label, are there any  
20 statements on this label that you would consider  
21 to be immaterial?

22 A. No.

23 Q. So is it your opinion that every  
24 statement that we can see in these photographs  
25 is material?

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1 A. Yes.

2 Q. Is it your opinion that all statements  
3 on all labels are material?

4 A. Yes.

5 MR. HERRINGTON: Object to the  
6 form.

7 BY MR. SKAAR:

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8 Q. So have you ever -- in any of the  
9 cases that you've been disclosed as an expert  
10 witness involving food labeling, have you ever  
11 concluded that a food label is immaterial?

12 A. No.

13 Q. Can you imagine a situation in which  
14 you would conclude that a label that appears on  
15 a food product is immaterial?

16 MR. HERRINGTON: Objection. To  
17 clarify so we have a clear record, when you say  
18 label, are you talking about the totality of the  
19 label or particular label statement.

20 MR. SKAAR: I'm talking about the  
21 totality of a label.

22 MR. HERRINGTON: Okay. You can  
23 answer.

24 A. I have not seen one to date.

25 Q. You've not seen any statement on a

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1 food label that you would consider to be  
2 immaterial; is that right?

3 A. Correct.

4 Q. Okay. And it's your opinion that  
5 people would compare products that say good or  
6 excellent source of whole grain with products  
7 that do not, right?

8 A. Yes.

9 Q. And, again, that would be products  
10 within the same family, similar products, right?

11 A. Not necessarily. I mean, when people

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1 Q. Have you ever seen Bimbo Original  
2 Toasted Bread?

3 A. No.

4 Q. Have you ever seen any photos of it?

5 A. No.

6 Q. So you have no idea what it looks  
7 like?

8 A. No.

9 Q. And you don't know how Bimbo toasted  
10 bread is typically used by people, right?

11 A. I don't.

12 Q. All right. How many cases -- in how  
13 many cases have you rendered an opinion where  
14 the opinion's been disclosed in court on the  
15 materiality of food labels? Do you know?

16 A. Yes. 24.

17 Q. Do you maintain a list of such cases  
18 somewhere?

19 A. Yes.

20 Q. Have you provided it to us in this  
21 case?

22 A. No.

23 Q. It's not part of your CV, right?

24 A. No.

25 Q. Okay. Did any of those cases involve

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1 I'd like to mark that as the next exhibit in the  
2 line?

3 A. Okay.

4 (Exhibit 38 marked  
5 for identification)

6 Q. Dr. Caswell, looking at this now, I  
7 see the first four pages appear to be  
8 photographs and then the last three pages appear  
9 to be a depiction of the labels for Thomas'  
10 bagel thins, correct?

11 A. Yes.

12 Q. Where did you get the artwork  
13 depictions of the labels?

14 A. From Brian Herrington.

15 Q. Okay. Aside from these photographs  
16 and artwork that we've just marked as exhibits  
17 in this case, have you seen photographs or  
18 artwork for any of the other Bimbo products at  
19 issue in this case?

20 A. No.

21 Q. Okay. So this is the totality of what  
22 you've reviewed specific to the products at  
23 issue in this case?

24 A. Yes.

25 Q. Other than the work that you've done

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17 I have read the foregoing transcript of my  
18 deposition, and except for any corrections or  
19 changes noted above, I hereby subscribe to the  
20 transcript as an accurate record of the  
21 statements made by me.

22 Executed this\_\_\_\_\_day of\_\_\_\_\_, 2015.

23

24 DR. JULIE A. CASWELL

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1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS. )

3

4 I, Daria L. Romano, RPR, CRR and Notary  
5 Public in and for the Commonwealth of  
6 Massachusetts, do hereby certify that there came  
7 before me on the 1st day of April, 2015, at 9:54  
8 a.m., the person hereinbefore named was duly  
9 sworn by me and that such deposition is a true  
10 record of the testimony given by the witness.

11 I further certify that I am neither related  
12 to nor employed by any of the parties or counsel  
13 to this action, nor am I financially interested  
14 in the outcome of this action.

15 In witness whereof, I have hereunto set my  
16 hand and seal this \_\_\_\_\_ day of April, 2015.

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Notary Public

My Commission Expires

February 20, 2020

## **EXHIBIT D**

## **Certification Mark License Agreement Food Products**

This Agreement is made between the American Heart Association, Inc. (hereinafter "AHA"), a New York not-for-profit corporation having its principal offices at 7272 Greenville Avenue, Dallas, Texas 75231, and BBU, Inc., and its US subsidiaries (hereinafter "Company"), a corporation organized under the laws of the State of Pennsylvania, whose principal place of business is 255 Business Center Drive, Horsham, Pennsylvania 19044.

WHEREAS, the AHA is a non-profit organization dedicated to the reduction of disability and death from cardiovascular disease and stroke; and

WHEREAS, Company desires to display on certain of its products and/or their packaging and related materials that such products comply with an applicable standard, guideline or criteria of the AHA.

NOW THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the parties agree as follows:

1 Term: This Agreement shall begin on, January 15, 2010, ("Effective Date") and shall continue in effect for a term of one year or until twelve (12) months following the expiration of all Product Schedule(s) executed under the terms of this Agreement, whichever later occurs, unless terminated earlier as set out in Section 9. On the Effective Date of this Agreement, any prior Certification Mark License Agreement or Retailer Agreement that may still be in effect are hereby terminated and all Product Schedules in effect under such prior agreement shall continue in effect and be subject to the terms and conditions of this Agreement.

2 Definitions:

2.1 "Certification Mark" is defined as the American Heart Association's heart-check certification mark which is registered with the U.S. Patent & Trademark Office, registration no. 2,102,356, which is used to indicate that a product complies with an applicable AHA standard, guideline or criteria.

2.2 "Food Certification Program Application Packet" or "program Application Packet" is defined as the collection of information, forms and application materials provided by the AHA to food companies to advise them of the AHA's Food Certification Program requirements relating to nutritional criteria, fees, graphic standards and other requirements.

2.3 "Product" is defined as a specific food whose Product Name, Flavor, Nutrition Facts label, and/or Ingredient List combination represents product differentiation or uniqueness. Products with differences in Brand Name or Form only, where the Nutrition Facts label and the Ingredient List are the same, may qualify for the Branded Commodities or Brand/Form Variation Only rates.

2.4 "Product Schedule(s)" are agreements, in the form of Attachment A, which identify the Product(s) on which Company may display the Certification Mark pursuant to paragraph 4.2 of this Agreement. Each executed Product Schedule forms a separate

agreement, with respect to the Product(s) listed therein, and is subject to the terms and conditions of this Agreement, lists the specific standard, guidelines or criteria which the Product(s) must meet, and any additional terms applicable to such Product(s).

- 3 Food Certification Program Requirements: In addition to the requirements set out in this Agreement, Company and each of the Product(s) must comply with the AHA's Corporate Relations Policy, and with the nutritional criteria, fee, and graphic standards requirements set out in the Program Application Packet in effect when the Product Schedule for such product is signed. The Corporate Relations Policy, nutritional criteria, fee and graphic standards requirements are incorporated by reference into the Product Schedule, and such requirements may be amended by the AHA at any time. The AHA will give Company one hundred and twenty (120) calendar days' written notice of any change to these requirements. Such requirements include, but are not limited to, the following:

3.1 The Product(s) must comply with nutritional criteria.

3.2 All Product packaging and promotional materials, including all package sizes and UPC and all revisions thereto, must be reviewed and approved by the AHA as required under this Agreement whether or not the heart check mark is displayed on the package.

3.3 Company must submit to the AHA, for its review and approval, revised nutritional values for each Product that is reformulated.

3.4 Company acknowledges and agrees that it is responsible for identifying the correct FDA or USDA food subcategory for each Product, or the main dish or meal designation, if applicable, and that the subcategory or designation will determine the AHA nutrition criteria to be applied to the Product. The AHA reserves the right to terminate the Product Schedule, or require Company to resubmit a Product(s), and with all applicable fees should its subcategory or designation be found to be in error.

4 Certification Mark and License:

4.1 Company acknowledges the AHA's ownership of the Certification Mark. No title to or ownership of the Certification Mark, or any part thereof, is hereby transferred to Company. Company agrees that all uses of the Certification Mark shall inure to the benefit of the AHA and that Company shall acquire no rights, interests, or goodwill in the Certification Mark. Company agrees to not contest the validity of the AHA's rights and interests in the Certification Mark, including after the termination of this Agreement.

4.2 Use of the Certification Mark: The AHA hereby grants to Company a limited, non-exclusive, non-transferable license, only within the United States and its Territories and Possessions, to display the Certification Mark on the packaging of the Product(s) listed on a properly executed Product Schedule (a sample of the Product Schedule form is attached hereto as Attachment A) only so long as the Product(s) is in compliance with the applicable AHA nutritional criteria as set out in the then-current Program Application Packet, and to conduct promotions in radio, television, magazine and newspaper advertisements, billboards, direct mail, company-generated coupons, trade or business-to-business promotions, consumer brochures, point-of-purchase promotions, Web sites, e-mails, public relations and press materials, and other media customarily used to reach consumers, excluding sweepstakes, contests, fund-raising and games of chance, featuring the AHA Certification Mark with those Product(s) listed

on the Product Schedule(s). The Certification Mark cannot be integrated into an educational message. The license for each Product shall be effective for the one (1) year period (twelve consecutive months) set out in the Product Schedule for that Product. Upon termination or expiration of the license, or upon the Product(s) ceasing to comply with the applicable AHA standard, guideline or criteria, Company shall cease any and all use of the Certification Mark. Provided however that, so long as Company's use of the Certification Mark meets the requirements of this Agreement, and the Product is in compliance with the applicable standard, guideline or criteria in effect immediately prior to termination, then Company may continue to distribute such Product bearing the Certification Mark that has already been packaged and warehoused, for a period of one hundred twenty (120) calendar days following the date of termination of the license. However, advertising and promotional materials bearing the Certification Mark may not be distributed, air or appear more than sixty (60) calendar days following the date of termination or expiration of the license. If Company makes any use of the Certification Mark outside of the allowed period(s), then in addition to all other remedies allowed under this Agreement, Company shall be obligated to pay \$5,000 per month per infringing product, as liquidated damage and not as a penalty.

- 4.3 Any and all uses of the Certification Mark must conform to the "Packaging, Advertising, Promotions and Graphic Standards for the American Heart Association Food Certification Program" (hereinafter "Graphic Standards"), which are incorporated herein by reference. The Graphic Standards may be amended by the AHA from time to time and will become effective as to Company (i) upon one hundred twenty (120) calendar days written notice to Company, or (ii) when Company submits new promotions or packaging materials for review, whichever comes first.
- 4.4 Additional rules for grocery retailer print ads. These rules apply only to print newspaper ads and print newspaper circulars issued by retail grocers for Product(s):
  - 4.4.1 Company will develop an ad slick, using the Graphic Standards that employs the Certification Mark in relation to the Product. The artwork is complete and boxed, so that the retailer may not use an entire unit of artwork and may not redesign or modify the artwork or text in the retail ad. The Certification Mark may not be floated on the ad slick – it must be incorporated with the Product elements, boxed and used in its entirety. Company must state clearly on the ad slick that an entire piece of art must be used as a unit and retailer cannot change copy or artwork. Company must obtain the AHA's written approval of the ad slick prior to distribution to retail grocers. Company may authorize retail grocers to issue print newspaper ads or print newspaper circulars that match the ad slick, so long as they do not redesign or modify the artwork or text. Company must state clearly on the ad slick that an entire piece of art must be used as a unit and the retail grocer cannot change copy or artwork.
  - 4.4.2 Company will be fully responsible for any misuse of the Certification Mark by any third-party advertisers, including but not limited to retail grocers. If a retail grocer has violated any of these guidelines, including any applicable guidelines set out in the Program Application Packet, Company will revoke the retailer's authorization to issue print newspaper ads or issue print newspaper circulars based on the ad slick.

4.4.3 Company shall provide the AHA with tear sheets of all print ads that include the Certification Mark within thirty (30) calendar days following the date on which the ad was run.

- 5 Review and Approval by the AHA: The parties acknowledge and agree that the placement and size of the Certification Mark, placement and size of text, use of recipes, as well as other matters regarding information conveyed to the public in conjunction with the Certification Mark and its graphics, must be consistent with the Graphic Standards and shall be subject to the prior review and written approval of the AHA. Company shall not proceed with any printing or distribution of packaging containing the Certification Mark until approval by the AHA of the final text and graphics has been given in writing and Company's materials are stamped "Final Approval" by the AHA. All other materials, including but not limited to Promotional Materials, must also be approved by the AHA prior to use. The AHA must review, prior to distribution, (i) any materials that reference a company's participation in the AHA Food Certification Program, whether or not the Certification Mark is used and (ii) all package sizes with UPC of certified Products, whether or not the Certification Mark is displayed on the package or there is a reference to the Food Certification Program.

The AHA may give or withhold its approval under this Agreement in its sole and unfettered discretion, and based upon the AHA's science or positions on science, education and public health. Company acknowledges that the AHA shall have no liability to Company for costs and expenses resulting from the AHA's withholding of approval, or from its conditional approval. AHA's review of Company's materials does not relieve Company of Company's sole responsibility and liability for Company's advertising. All advertising prepared by Company in connection with this Agreement shall be in full compliance with Federal, state and local laws and regulations relating to the advertising, marketing and promotion of Company's products and shall in no respect be false, deceptive or misleading. If any such advertising, marketing or promotion should encounter any legal challenge or inquiry, Company shall defend the matter in question and shall pay any and all losses, liabilities, costs, actions, claims and other obligations, including attorneys' fees.

6 Costs/Fees:

6.1 Company shall be responsible for any and all of its costs associated with the subject matter of this Agreement, including but not limited to the cost associated with testing requirements and representative sample uses of the Certification Mark and their graphics for the AHA's review.

6.2 Fees: Company shall pay a non-refundable annual fee per Product as set forth in the Fee Schedule(s) found in the Food Certification Program Application Packet. The Fee Schedule(s) shall include, but not be limited to, fees for both new Product(s) and renewals. These fees cover the AHA's costs of operating and promoting the Food Certification Program. The AHA reserves the right to amend the Fee Schedule(s) described herein upon one hundred and twenty (120) calendar day's written notice to Company. All fees must be paid in advance of Product approval and execution of the applicable Product Schedule. For a renewal Product(s), payment must be made by the due date stated on the Renewal Invoice.

- 7 Reservation of Rights: The AHA reserves all rights not expressly granted in this Agreement.

8 Warranties, Indemnification and Insurance:



- 8.1 Company hereby represents and warrants to the AHA that (a) the display on the Product(s) and/or promotional materials of the Certification Mark and (b) the processing, packaging, labeling, distribution and sale of such Product(s), comply with all applicable federal, state and local laws, regulations and government agency rules, including, but not limited to, food labeling laws. The foregoing warranties shall be deemed made continuously during the term of this Agreement.
- 8.2 Company hereby represents and warrants to the AHA that it is not a tobacco company; a tobacco company corporate subsidiary or parent. "Subsidiary" and "parent" are defined for purposes of this paragraph as an entity in which there exists a 5% or greater ownership by, or of, a tobacco company.
- 8.3 Company hereby agrees to indemnify and hold harmless the AHA from and against any and all suits, actions, losses, damages, claims, or liability of any character, type, or description, including without limitation all expenses of settlement, litigation, court costs, and attorney's fees (collectively, "Liabilities"), directly or indirectly arising out of, or occasioned by, (a) Company's use or display of the Certification Mark; (b) any of the other activities contemplated by this Agreement; (c) the Product(s); their packaging, labeling, advertisements, related materials and activities; and including, without limitation, their design, formulation, manufacture, marketing and/or distribution, regardless of whether such were permitted or contemplated under this Agreement or approved by the AHA; (d) violations or alleged violations of applicable food labeling laws, regulations and government agency rules in connection with the use of the AHA's name or Certification Mark; and (e) any breach of Company's obligations, representations or warranties hereunder. Company further agrees to defend, at its own expense and on behalf of the AHA, any such Liabilities. For purposes of this paragraph, the parties indemnified shall include the AHA, its officers, directors, members, agents and employees.
- 8.4 Company shall obtain and maintain at its expense, commencing at least thirty (30) calendar days prior to the date of commencement of distribution of any Product bearing the Certification Mark, insurance designating the AHA as an additional insured party from a qualified insurance carrier in the amount of \$5,000,000 for general liability, products liability and personal injury. This policy shall specify that it may not be modified or canceled by the insurer, except after thirty (30) calendar day's prior written notice by the insurer to the AHA. Prior to selling or distributing any Product bearing the Certification Mark, upon request, Company shall provide the AHA with a certificate of insurance. For purposes of this paragraph, the parties insured shall include the AHA, its officers, directors, members, agents and employees.
- 8.5 The AHA indemnifies Company and undertakes to hold it harmless against any final judgments arising from claims or suits arising from an infringement of any third party's rights within the United States in the Certification Mark if used by Company in a manner authorized hereunder; provided Company has given the AHA prompt written notice of all such claims or suits. The AHA shall have the option to undertake and control the defense and settlement of any such claim or suit and if, following reasonable notice and opportunity, the AHA fails to undertake such defense shall reimburse Company for reasonable counsel fees incurred by Company in defense of such a suit. No settlement of any such claim or suit may be made without the AHA's prior written consent.
- 8.6 THE AHA'S LIABILITY FOR ANY AND ALL CLAIMS ARISING UNDER THIS AGREEMENT, UNDER ANY LEGAL THEORY, SHALL NOT EXCEED THE AMOUNT**

OF MONIES, IF ANY, PAID BY COMPANY TO THE AHA DURING THE TWELVE (12) MONTHS PERIOD PROCEEDING THE DATE ON WHICH A CLAIM IS MADE. UNDER NO CIRCUMSTANCES WILL THE AHA BE LIABLE FOR ANY COSTS, DAMAGES, LIABILITY OR EXPENSES ARISING FROM COMPANY'S PRINTING OF PACKAGING, PRODUCING ADVERTISING, OR PROMOTIONAL MATERIALS, WHETHER OR NOT THE AHA APPROVED SUCH MATERIALS.

**9 Termination:**

9.1 AHA may terminate this Agreement and/or Individual Product, or Product Schedules by written notice to Company:

- A. Immediately, upon the breach of any term, condition, representation or warranty of this Agreement by Company, which is not cured within thirty (30) calendar days following receipt of written notice of the breach from AHA.
- B. Immediately upon written notice by the AHA, without requirement for any cure period, if any three (3) test average of Individual Product samples do not comply with the applicable AHA nutritional standard, guideline or criteria, and the discrepancy is in excess of twenty percent (20%) for any individual nutritional element.
- C. Upon ninety (90) calendar days' prior written notice to Company, if any three (3) test average of Individual Product samples do not comply with the applicable AHA nutritional standard, guideline or criteria and the discrepancy is equal to or less than twenty percent (20%) for any individual nutritional element.
- D. Upon ninety (90) calendar days' prior written notice to Company, if a substantial portion (5% or more) of Company's voting common stock (or other equity ownership interest) is purchased or otherwise directly or indirectly acquired by a tobacco company or a tobacco company subsidiary, or if Company purchases, otherwise directly or indirectly acquires or otherwise becomes the owner of a substantial portion (5% or more) of the voting common stock (or other equity ownership interest) in a tobacco company.
- E. Upon one hundred twenty (120) calendar days' prior written notice to Company in the event that the AHA elects to stop certifying products certified under the standard, guideline or criteria applicable to the Product.

9.2 The AHA may terminate Individual Products and/or Product Schedules at any time upon thirty (30) calendar days' prior written notice to Company if the AHA reasonably and in good faith determines that (i) the Product(s) is materially deficient in quality or packaged in a misleading or deceptive manner; or (ii) the Product(s) no longer complies with the applicable AHA standard, guideline or criteria. Following termination under this subparagraph, Company may not make continued distributions under the provisions of subparagraph 4.2.

9.3 The AHA may terminate Individual Products and/or Product Schedules immediately, without further notice, if the Product(s) do not comply with revised nutritional criteria. During the term of this Agreement, the AHA will provide Food Certification Program Product participants with one hundred and twenty (120) calendar day's written notice of changes to nutritional criteria. Upon expiration of the one hundred and twenty (120) calendar days, Company shall have three hundred and sixty (360) calendar days to

bring non-compliant certified Products into compliance with the changed nutritional criteria. Products submitted for certification after the mailing date of the notice letter, must comply with the changed nutritional criteria at the time of submission.

10. Miscellaneous Provisions:

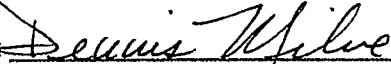
- 10.1 Notices: Company shall send copies of all notices to the AHA, by either, fax, overnight delivery or certified mail, return receipt requested, to it as follows: AMERICAN HEART ASSOCIATION, INC., 7272 Greenville Avenue, Dallas, Texas 75231, Attention: Certification Manager (or such other person as the AHA may designate in writing). The AHA shall send copies of all notices to Company, postage prepaid, to its principal place of business (or such other business address that Company may designate to the AHA in writing).
- 10.2 Food Safety: Company shall promptly notify the AHA of any report of contamination, poisoning or any other food safety issue involving any certified Product(s).
- 10.3 Force Majeure: Neither party shall be in default by reason of any failure of its performance under this agreement, if such failure results, directly or indirectly, from fire, explosion, strike, freight embargo, act of God, or of the public enemy, war, civil disturbance, terrorism, act of any government, de jure or de facto, or agency or official thereof, labor shortage, transportation contingencies, unusually severe weather, quarantine restrictions, epidemic, or catastrophe. Any schedule or time for performance required under this Agreement shall be extended as necessary to overcome the effects of such force majeure.
- 10.4 Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.
- 10.5 Assignment: Neither party may assign or transfer its rights or obligations under this Agreement without the prior written agreement of the other party.
- 10.6 Waiver: No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, shall be deemed to be, or shall constitute, a waiver of any other provision hereof; nor shall such waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- 10.7 Parties Named: Nothing in this Agreement, whether express or implied, is intended to confer upon any person, other than the parties identified herein, any rights or remedies.
- 10.8 Applicable Law: This Agreement shall be performed in Dallas, Dallas County, Texas and governed by the laws of the State of Texas without regard to its conflict of laws provisions.
- 10.9 No Joint Venture: Company and the AHA are neither partners nor joint venturers hereunder, and neither shall have any power to obligate or bind the other to third parties in any manner whatsoever.
- 10.10 Approvals: No approval by the AHA under this Agreement shall operate or be construed as an acknowledgment by the AHA of Company's compliance with any/all applicable federal, state and local laws, regulations and government agency rules; nor

is such approval a guaranty or warranty on the part of the AHA as to the quality or character of the Product to which such approval relates. No such approval shall be deemed an authorization of any liability for indebtedness or claims of damage whatsoever by any third party against the AHA.

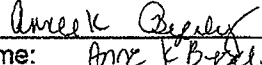
- 10.11 Entirety: This Agreement, along with properly executed Product Schedule(s), constitute the sale and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting this subject matter. In the event of any conflict between the terms of this Agreement and the terms of any Product Schedule or other attachment, the terms of this Agreement shall prevail. This Agreement may only be modified by a written amendment signed by authorized representatives of each party.
- 10.12 Survival; Subparagraphs 4.1, 8.3, and any other terms and conditions required for the interpretation of this Agreement or necessary for the full observation and performance by each party hereto, shall survive termination of this Agreement.
- 10.13 Company will conduct not less than four (4) promotions each year that highlight the heart-check mark.

AGREED:

AMERICAN HEART ASSOCIATION, INC.

By:   
Printed Name: Dennis Milne  
Title: Director, Food Certification Program  
Date: 4/21/10

BBU, INC.

By:   
Printed Name: Anne E. B. B. B.  
Title: VP Business Development  
Date: 4/21/10

Attachments:

A: Sample Product Schedule

## **EXHIBIT E**



**American Heart Association** **Product Compliance System**

**Product / Contact:** Thomas' Plain Bagel Thins **Reason:** Pending **Review Date:** 3/17/2011 4:30

**Company / Mfr.:** BBU, Inc. **Product Category / Subcategory:** FDA STD New Trans **Subcategory Code:** BR-08 **UPC:** 048121135454

**Date Activated:** Pending **Date De-activated:** **Product Category / Subcategory:** bread

**Fats:**

1. Total Fat (grams) (rounded):	1.00
2. Total Fat (grams) (actual):	-2.00000
3. Total Fat (tested value):	1.0000
4. Sat. Fat (grams) (rounded):	0.00
5. Sat. Fat (grams) (actual):	-2.00000
6. Sat. Fat (tested value):	0.00000
7. Trans Fat (grams) (rounded):	0.00
8. Trans Fat (grams) (actual):	0.0000
9. Trans Fat (tested value):	0.0000
10. Sodium (mg) (rounded):	210.00
11. Sodium (mg) (actual):	-2.00000
12. Sodium (tested value):	210.00
13. Mono Unsaturated Fat (grams):	0.00
14. Poly Unsaturated Fat (grams):	0.00
15. Cholesterol (mg):	0.00

**Additional Nutritional Info:**

Serving Size:	46.00
Unit of Measurements:	Grams
Source of U of M:	Label
Total Calories (Kcal):	110.00
Potassium (mg):	-2.00

**Lab Analysis Info:**

Lab Analysis Headed? ☐ No

Lab Analysis Received / Date:

**Jelly Bean Nutrients:**

Vitamin A (%):	0.00
Vitamin C (%):	0.00
Calcium (%):	4.00
Iron (%):	8.00
Fiber (%):	16.00
Protein (%):	-2.00
Protein (grams):	4.00

**Carbohydrates:**

Total CHO (grams):	25.00
1. Sugars (grams):	3.00
2. Added Sugars (g):	-1.00
3. Natural Sugars (g):	-1.00
4. Fiber (grams):	4.00
5. Soluble Fiber (grams):	-2.00

**Pass Test?** ☒ Yes, if checked

**UPC:** 048121135454

**Duplicate UPC?** ☐ No

**Secondary UPC Product:** ☐ No

**Marketing Results:** ☐ Invoices ☐ Payments Received ☐ Groups/Companies ☐ FDA Certification Variances ☐ Whole Grain / Sol. Fiber ☐ Lab Results ☐ UPC ☐ Secondary Contacts ☐ Contact Info ☐ Documents ☐ System Info ☐ Web Info

**RACC Adjusted Values:**

RACC:	50.00
Adjusted Total Fat:	1.09
Adjusted Saturated Fat:	0.00
Adjusted Trans Fat (S.S.):	0.00
Adjusted Trans Fat (RACC):	0.00
Adjusted Sodium:	226.26
Adjusted Carbohydrate:	0.00
Adjusted Cholesterol:	0.00

**Certification Test Variances:**

Variance Total Fat:	-1.96
Variance Saturated Fat:	-1.05
Variance Trans Fat:	-0.50
Variance Trans Fat at RACC:	-0.50
Variance Sodium:	-251.74
Variance Carbohydrate:	-20.05
Variance Cholesterol:	-20.05

**Main Nutritional Components:**

Adjusted Vitamin A:	0.00
Adjusted Vitamin C:	0.00
Adjusted Iron:	8.70
Adjusted Fiber:	17.39
Adjusted Calcium:	4.35
Adjusted Protein:	4.35

**Jelly Bean Components:**

Variance Vitamin A:	-9.95
Variance Vitamin C:	-9.95
Variance Iron:	-1.25
Variance Fiber:	7.44
Variance Calcium:	-5.60
Variance Protein:	-5.60

**Certification Test Variances:**

Variance Vitamin A:	-9.95
Variance Vitamin C:	-9.95
Variance Iron:	-1.25
Variance Fiber:	7.44
Variance Calcium:	-5.60
Variance Protein:	-5.60

## **EXHIBIT F**

1  
2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 SAN FRANCISCO DIVISION

5 -----x

6 ALEX ANG and LYNN STREIT,  
7 individually and on behalf of all  
8 others similarly situated,  
9 Plaintiffs,

10  
11 -against- 13 Civ. 1196 (WHO)

12  
13 BIMBO BAKERIES, INC.,  
14 Defendant.

15 -----x

16 March 11, 2015

17 10:07 a.m.

18  
19 Deposition of DONALD M. MAY, taken by  
20 the defendant, pursuant to Notice, at the  
21 offices of Hogan Lovells US LLP, 875 Third  
22 Avenue, New York, New York, before David  
23 Levy, CSR, RPR, CLR, a Notary Public of the  
24 State of New York.  
25



A P P E A R A N C E S:

THE FLEISCHMAN LAW FIRM, PLLC

Attorneys for Plaintiffs

565 Fifth Avenue, Seventh Floor

New York, New York 10017

(212) 880-9571

BY: BRADLEY F. SILVERMAN, ESQ.

bsilverman@fleischmanlaw.com

HOGAN LOVELLS US LLP

Attorneys for Defendant

3 Embarcadero Center, Suite 1500

San Francisco, California 94111

(415) 374-2300

BY: MARK C. GOODMAN, ESQ.

mark.goodman@hoganlovells.com

1 May  
2 before you looked at the website?

3 A. The Thomas's, Sara Lee, some of the  
4 bread products.

5 Q. Were you familiar with those products  
6 because you've purchased them?

7 MR. SILVERMAN: Objection.

8 You can answer the question.

9 A. In some cases, yes.

10 Q. In which cases?

11 A. Well, I guess the Thomas's I've  
12 purchased, and I should add one more there,  
13 Entenmann's. It's been a while, but I purchased  
14 those in the past.

15 Q. Do you know why you purchased the  
16 Thomas's products?

17 MR. SILVERMAN: Objection.

18 You can answer the question.

19 A. Most recently, it's because what my  
20 wife buys for -- for the kids. So she's -- she'll  
21 send me out sometimes.

22 Q. With a list?

23 A. Yes.

24 Q. Do you know why your wife puts  
25 Thomas's on her grocery list?

1 May

2 MR. SILVERMAN: Objection.

3 If you know the answer.

4 MR. GOODMAN: That's why I asked him  
5 if he knows.

6 A. She doesn't put it on the list.  
7 She'll put bagels, but, you know, from seeing them  
8 there, I've known, you know, seeing them in the  
9 past, that those are the ones I figured out was  
10 Thomas's.

11 Q. Those are the ones she wanted you to  
12 buy?

13 A. Correct.

14 Q. Do you know why she wanted you to buy  
15 those bagels? That's my question.

16 MR. SILVERMAN: Objection. He's not a  
17 fact witness. He's an expert witness.

18 MR. GOODMAN: I know what he is.  
19 Thanks.

20 A. Not specifically, no.

21 Q. Has your wife ever told you to buy  
22 Thomas's bagels?

23 MR. SILVERMAN: Objection.

24 You can answer the question.

25 A. My recollection is that she doesn't

1 May

2 Q. Sure. What data would you consult in  
3 order to determine whether there was a negative  
4 impact for the "hundred percent whole wheat"  
5 claim?

6 A. Again, we're measuring the impact,  
7 positive or negative, based on the data of, you  
8 know, when the labels came on and off, when -- the  
9 change in the products over time. So we would be  
10 able to identify whether that claim is zero,  
11 statistically positive, or if it really was  
12 negative.

13 Q. Dr. May, if the product was always  
14 called "a hundred percent whole wheat" during its  
15 entire existence, how would you determine whether  
16 any consumers did not buy the product because it  
17 was called "a hundred percent whole wheat"?

18 MR. SILVERMAN: Objection.

19 A. I'm not sure why I would want to do  
20 that. Again, my -- the question I'm trying to  
21 answer is, what incremental or proportion of the  
22 total value of the product price is related to the  
23 "hundred percent whole wheat" claim.

24 Q. And you wouldn't look at whether  
25 consumers would not buy a product because of that

1 May  
2 a legal standpoint, has no value."

3 How do you have that understanding?

4 A. That's what I was informed by -- by  
5 counsel.

6 Q. And again, Dr. May, as a matter of  
7 economic principles, food has some value, correct?

8 MR. SILVERMAN: Objection.

9 A. Um -- yes. To some -- yes.  
10 Definitely, food has value. I wouldn't argue with  
11 that.

12 Q. Further on in paragraph 19, toward the  
13 middle of that paragraph, it says, "These  
14 third-party vendors include Information Resources,  
15 Inc. (IRI), and Nielsen, who provide point-of-sale  
16 retail price data."

17 Do you know whether that, or those  
18 data give you the actual price paid for the  
19 product?

20 A. My understanding is that they survey  
21 and derive the total revenues and the units and  
22 the size and then you would derive the price per  
23 ounce or whatever unit you're looking at based on  
24 that.

25 Q. My question, Dr. May, is, do you know

1 May  
2 price, which is sort of capturing the price growth  
3 rate. And therefore, the coefficients in the  
4 regression are capturing the percentage of that  
5 price within that.

6 So I guess the shortest answer is, it's  
7 mathematically derived by the way you construct  
8 the model. And it's -- you know, I cited other  
9 studies that had been scientifically approved that  
10 had, sort of had done the same methodology.

11 Q. Have you gone so far as to construct a  
12 model in this case?

13 MR. SILVERMAN: Objection.

14 A. No. Again, I would look at the data.  
15 I need the data first.

16 Q. So at this point, you're not sure how  
17 the sales data would allow you to calculate the  
18 percentage of product value attributable to  
19 illegal claims, correct?

20 MR. SILVERMAN: Objection.

21 A. No, I know how it would. I don't know  
22 whether I'm going to find anything there, though.  
23 It might show me that there was no value for this  
24 claim.

25 Q. I mean, you say you know how you would

C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

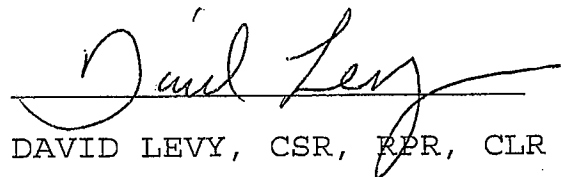
COUNTY OF KINGS )

I, DAVID LEVY, CSR, a Shorthand  
Reporter and Notary Public within and for  
the State of New York, do hereby certify:

That DONALD MAY, the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such  
deposition is a true record of the testimony  
given by the witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage, and that I am in no  
way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 25th day of March 2015.

  
DAVID LEVY, CSR, RPR, CLR